DEREGULATION OF THE INTERCITY BUS INDUSTRY

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 3663

TO AMEND SUBTITLE IV OF TITLE 49, UNITED STATES CODE,
TO PROVIDE FOR MORE EFFECTIVE REGULATION OF MOTOR
CARRIERS OF PASSENGERS

MARCH 8, 1982

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DEREGULATION OF THE INTERCITY BUS INDUSTRY

MONDAY, MARCH 8, 1982

U.S. SENATE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 235, Russell Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. This morning the subcommittee will hear testimony on both the need to deregulate the intercity bus industry and the degree to which deregulation should occur. The issues examined will be entry, exit, rates, and preemption. We will look at the effect that the regulatory reform of these areas will have on passengers, communities, and the industry.

The testimony will revolve around H.R. 3663, the House Bus Regulatory Reform Act of 1981, and the administration's proposed changes to this bill. Subsequent to today's hearing, the record will be open for 2 weeks for those who have been asked to respond to questions for the record and those who wish to submit written testimony.

Senator Pressler?

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Mr. Chairman, thank you.

I am pleased that the subcommittee is holding hearings on the issue of bus regulatory reform. As the last transportation industry to benefit from regulatory reform, our Nation's bus industry deserves an opportunity to discuss congressional action on outdated and unnecessary regulations. I look forward to hearing the testimony this morning on H.R. 3663.

However, I should say very firmly that the word "deregulation" has come to have a very bad meaning in my home State of South Dakota as regards trucking and airline service. All studies have shown that, particularly in the airline service, we have suffered staggering losses of airline services that have not been replaced. Previous congressional efforts to deregulate the trucking, rail, and airline industries have caused serious transportation dislocation and loss of service in South Dakota.

With this in mind, I would ask that the subcommittee pay special attention to the importance of rural bus service while debating this measure. I would like to briefly quote from a report published by the South Dakota Department of Transportation, which describes the importance of bus service in rural areas:

> Public transportation is becoming more important because of out-migration of young people from the rural areas. Population decline in the State's rural towns and communities has forced many of the State's rural towns and communities to do without services that once were available to them. This out-migration is forcing people to travel greater distances to obtain goods and services, and a higher percentage of the residents are dependent upon others for transportation.
>
> The motor coach lines which operate in South Dakota provide the public transportation needs for many communities in South Dakota. The lines which operate in South Dakota provide an important service to the people who need public transportation.

Mr. Chairman, it is readily admitted that those people who depend on intercity bus transportation are the same people who do not have other transportation alternatives should that service disappear. I am concerned that whatever congressional action is taken here, we must pay close attention to the needs of our citizens in farming communities and rural areas.

Thank you, Mr. Chairman. And before beginning I wish to ask unanimous consent to insert into the record a two-page statement from Lowell Hansen, the president of Jack Rabbit Lines in Sioux Falls, S. Dak., on this matter. He is also Lieutenant Governor of our State and he will be testifying later.

I do want to emphasize how much we must watch what's happening in our small towns and rural areas. With airline deregulation at least, the towns in my State have been abandoned in many cases. And if this were to occur with bus service, the elderly and the people living in the towns who depend upon them would be left without such service. Any analogies that can be drawn by the witnesses between this and airline deregulation I would like to hear, because we heard so many good things that were going to happen when airline deregulation was discussed.

Senator **DANFORTH**. Thank you, Senator Pressler.

Senator Cannon?

OPENING STATEMENT BY SENATOR CANNON

Senator **CANNON**. Thank you very much, Mr. Chairman.

Last year the Texas Legislature was considering legislation that would permit United Parcel Service to provide service in Texas. At the hearing the regional vice president of Trailways testified as follows:

> They want to be allowed to apply for operating rights to operate over any highway they choose at any time they choose. Consider the ludicrous scenario if bus companies were permitted to do that. Our schedules could depart whenever we had a full load. If there wasn't enough revenue on board to support the schedule, we wouldn't operate. We would only serve towns on major highways and at the times it was convenient.
>
> It sounds ridiculous. That is precisely why the laws of this State have directed the Railroad Commission of Texas to require filing of schedules and routes.

And I confess, I was a little puzzled when I read that testimony last year because it occurred at just about the same time that the bus industry was asking us to preempt States from regulating such things. At first, it seemed to me a little illogical that a major carrier would testify one way before a State legislature and take exactly the other side when dealing with Congress.

But Mr. Chairman, I believe I have finally figured out the logic of the *Trailways* case, and it fits the logic of President Reagan's new federalism. It is not that regulation is bad; it is just that Federal regulation is bad, and that most States are not as enlightened as the Texas Railroad Commission.

In realizing that, Mr. Chairman, I believe I have found a solution to the overly burdensome Federal regulation that President Reagan likes to talk about, and the solution is so simple that I almost overlooked it. I suggest that we simply transfer the ICC's jurisdiction over the intercity bus industry to the Texas Railroad Commission.

During the last administration this committee took the lead in the passage of a series of sweeping measures to deregulate household goods carriers, trucking companies, railroads, and the airlines. As a result, all of these industries are now much more competitive than they were. Now President Reagan has taken a clue from the work of this committee and decided that less regulation is in order in many areas.

I look forward to today's hearing and the committee's consideration of this issue. Mr. Chairman, I appreciate the fact that you've scheduled this hearing, and I particularly want to congratulate the House of Representatives for passing a bill for us to consider.

Thank you, Mr. Chairman.

[The bill follows:]

II

97TH CONGRESS
1ST SESSION

H. R. 3663

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19 (legislative day, NOVEMBER 2), 1981

Read twice and referred to the Committee on Commerce, Science, and Transportation

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AN ACT

To amend subtitle IV of title 49, United States Code, to provide for more effective regulation of motor carriers of passengers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bus Regulatory Reform Act of 1981".

PURPOSE OF THE ACT

SEC. 2. This Act is part of the continuing effort by Congress to reduce unnecessary and burdensome Government regulation.

CONGRESSIONAL FINDINGS

SEC. 3. The Congress hereby finds that a safe, sound, competitive, and fuel-efficient motor bus system contributes to the maintenance of a strong national economy and a strong national defense and is vital to the transportation needs of the elderly, handicapped, and the poor; that the statutes governing Federal regulation of the motor bus industry are outdated and must be revised to reflect the future transportation needs and realities; that historically the existing Federal and State regulatory structure has tended in certain circumstances to inhibit market entry, carrier growth, maximum utilization of equipment and energy resources, and opportunities for minorities and others to enter the motor bus industry; that State regulation of the motor bus industry has tended, in certain circumstances, to unreasonably burden interstate commerce; that overly protective regulation has resulted in operating inefficiencies in the motor bus industry; that in order to reduce the uncertainty felt by the Nation's motor bus industry and those persons and communities that rely on its services, the Interstate Commerce Commission should be given explicit direction for regulation of the motor bus industry and well-defined limits within which it may act pursuant to congressional policy; that the Interstate Commerce Commission should not attempt to go beyond the powers vested in it by subtitle IV of title 49 of the United

States Code, and other legislation enacted by Congress; and that legislative and resulting changes should be implemented with the least amount of disruption to the transportation system consistent with the scope of the reforms enacted.

CONGRESSIONAL OVERSIGHT

SEC. 4. The appropriate authorizing committees of Congress shall conduct periodic oversight hearings on the effects of this legislation, not less than annually until July 1, 1985, to ensure that this Act is being implemented according to congressional intent and purpose.

NATIONAL TRANSPORTATION POLICY

SEC. 5. Subsection (a) of section 10101 of title 49, United States Code, is amended by striking out "and in regulating those modes" and all that follows through the period at the end of such subsection and inserting in lieu thereof the following: "and—

"(1) in regulating those modes—

"(A) to recognize and preserve the inherent advantage of each mode of transportation;

"(B) to promote safe, adequate, economical, and efficient transportation;

"(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

"(D) to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices;

"(E) to cooperate with each State and the officials of each State on transportation matters; and

"(F) to encourage fair wages and working conditions in the transportation industry;

"(2) in regulating transportation by motor carrier, to promote competitive and efficient transportation services in order to (A) meet the needs of shippers, receivers, passengers, and consumers; (B) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public; (C) allow the most productive use of equipment and energy resources; (D) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; (E) provide and maintain service to small communities and small shippers; (F) improve and maintain a sound, safe, and competitive privately owned motor carrier system; (G) promote greater participation by minorities in the motor carrier system; and (H) promote intermodal transportation; and

"(3) in regulating transportation by motor carrier of passengers (A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this subtitle; (B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this subtitle; and (C) to ensure that Federal reform initiatives enacted by the Bus Regulatory Reform Act of 1981 are not nullified by State regulatory actions.".

MOTOR CARRIER OF PASSENGERS ENTRY POLICY

SEC. 6. (a) Subsection (a) of section 10922 of title 49, United States Code, is amended (1) by striking out "II or", and (2) by striking out "motor common carrier of passengers or water common carrier, respectively," and inserting in lieu thereof "water common carrier".

(b)(1) Section 10922 of title 49, United States Code, is amended by redesignating subsections (c), (d), (e), (f), (g), (h), (i), and (j) (and any references thereto) as subsections (d), (e), (f), (g), (h), (i), (j), and (k), respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Except as provided in this section, the Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of passengers if the Commission finds that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission, unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized by issuance of the certificate is not consistent with the public interest.

"(2)(A) Except as provided in this section, the Commission shall issue a certificate to a person authorizing that person to provide regular-route transportation entirely in one State as a motor common carrier of passengers if the Commission finds that—

"(i) the person is fit, willing, and able to provide the intrastate transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission;

"(ii) such intrastate transportation is to be provided on a route over which the carrier has authority under this section to provide interstate transportation of passengers; and

"(iii) the person has requested the department, agency, or instrumentality of such State having jurisdiction over the granting of such authority for permission to provide such intrastate transportation and the request has been denied (in whole or in part) or such department, agency, or instrumentality has not acted finally (in whole or in part) on the request by the 150th day after the person made the request, in the case of a request made in the 2-year period beginning on the effective date of the Bus Regulatory Reform Act of 1981, or by the 120th day after the person made the request, in the case of a request made after the end of such 2-year period;

unless the Commission finds, on the basis of evidence presented by any person (including any department, agency, or instrumentality of a State or local government) objecting to the issuance of the certificate, that the intrastate transportation to be authorized by issuance of the certificate is not consistent with the public interest or that such denial or failure to act is not an unreasonable burden on interstate commerce.

"(B) Subject to subparagraph (D) of this paragraph, any intrastate transportation authorized by issuance of a certificate under this paragraph shall be deemed to be transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this subtitle. Upon issuance of such certificate, the carrier shall establish initial rates, rules, and practices applicable to such transportation to the same extent and in the same manner as a motor common carrier of passengers providing transportation subject to the jurisdiction of the Commission under such subchapter establishes rates, rules, and practices applicable to such interstate transportation. Any such initial rate, rule, or practice shall be subject to the provisions of chapter 107 of this subtitle as if such rate, rule, or practice were related to interstate transportation.

"(C) Not later than 30 days after the date on which a motor common carrier of passengers first begins providing transportation entirely in one State pursuant to a certificate issued under this paragraph, the carrier shall take all action necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation.

"(D) Transportation entirely in one State authorized by issuance of a certificate under this paragraph shall remain subject to the jurisdiction of the Commission, and initial rates, rules, and practices applicable to such transportation established under subparagraph (B) of this paragraph shall remain in effect, until permanent rates, rules, and practices applicable to such transportation are established under the laws of such State.

"(E) The Commission shall take final action upon an application filed under this subsection for authority to provide regular-route transportation entirely in one State not later than 90 days after the date the application is filed with the Commission.

"(F) This paragraph shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

"(G) Notwithstanding subparagraph (D) of this paragraph, intrastate transportation authorized under this paragraph may be suspended or revoked by the Commission under section 10925 of this title.

"(3) For purposes of paragraphs (1) and (2) of this subsection, transportation to be authorized by issuance of a certificate under this subsection shall not be consistent with the public interest if the Commission finds, on the basis of evidence presented by persons objecting to such issuance, that such issuance would impair, contrary to the public interest, the ability of any other motor common carrier of passengers to provide a substantial portion of the regular-route passenger service which such carrier provides. Diversion of revenue or traffic from a motor common carrier of passengers in and of itself shall not be sufficient to support a finding that issuance of the certificate would impair, contrary to the public interest, the ability of the carrier to provide a substantial portion of the regular-route passenger service which the carrier provides.

"(4) In making any findings relating to public interest under paragraphs (1) and (2) of this subsection, the Commission shall consider, to the extent applicable, at least the following:

"(A) the transportation policy of section 10101(a) of this title;

"(B) the effect of issuance of the certificate on motor carrier of passenger service to small communities;

"(C) in the case of a certificate for authority to provide special or charter transportation, whether any party to the proceeding with respect to issuance of the certificate is receiving transportation-related financial assistance from any governmental department, agency, or instrumentality;

"(D) the cumulative effect on any other motor common carrier of passengers if the Commission were to approve (i) the application for the certificate, and (ii) any other pending applications for authority to provide transportation as motor common carriers of passengers; and

"(E) any significant adverse effect of issuance of the certificate on commuter bus operations.

"(5) The provisions of paragraph (1) of this subsection relating to the Commission finding that transportation to be authorized by issuance of a certificate is not consistent with the public interest shall not apply to any application under this subsection for authority to provide—

"(A) interstate transportation service to any community not regularly served by a motor common carrier of passengers under this section;

"(B) interstate transportation service which will be a direct substitute for discontinued rail or commercial-air passenger service to a community if such discontinuance results in such community not having any rail and commercial-air passenger service and if such application is filed within 120 days after such discontinuance becomes effective; and

"(C) interstate transportation service to any community with respect to which the only motor common carrier of passengers providing interstate transportation service to such community applies for authority to discontinue providing such interstate service under section 10925(b) of this subchapter or applies for permission to reduce its level of intrastate service to such community under section 10935 of this subchapter.

"(6) The Commission may not make any finding under paragraphs (1) and (2) of this subsection which is based upon general findings developed in rulemaking proceedings.

"(7) The requirement that persons issued certificates under this subsection be fit, willing, and able includes, among other things, financial fitness, operational fitness, and safety fitness.

"(8) No motor common carrier of passengers may protest an application to provide transportation filed under this subsection unless—

"(A)(i) it possesses authority to handle, in whole or in part, the traffic for which authority is applied;

"(ii) it is willing and able to provide service that meets the reasonable needs of the traveling public; and

"(iii) it has performed service within the scope of the application during the previous 12-month period or has, actively in good faith, solicited service within the scope of the application during such period;

"(B) it has pending before the Commission an application filed prior in time to the application being considered for substantially the same traffic; or

"(C) the Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in section 10101(a) of this title.

"(9) No motor contract carrier of passengers may protest an application to provide transportation filed under this subsection.

"(10) For purposes of this section, authority under this subsection to provide special or charter transportation of passengers by motor vehicle includes authority to provide such transportation as round-trip service and as one-way service if such one-way service is provided as part of a round-trip movement involving the same passengers and air, rail, or water transportation or any combination of air, rail, or water transportation.".

(2) The Interstate Commerce Commission may preempt the laws of a State and issue a certificate in accordance with the requirements of subsection (c)(2) of section 10922 of title 49, United States Code, as amended by paragraph (1) of this subsection, authorizing a person to provide regular-route transportation entirely in such State (A) if a request was made by such person to the department, agency, or instrumentality of such State having jurisdiction over the granting of such authority for permission to provide such transportation before the effective date of this Act, and (B)(i) if such department, agency, or instrumentality denied (in whole or in part) such request on or after January 1, 1981, or (ii) if such department, agency, or instrumentality does not act finally (in whole or in part) on such request by the 120th day after such effective date.

(c) Paragraph (4) of subsection (e) of section 10922 of title 49, United States Code, as redesignated by subsection (b)(1) of this section, is amended to read as follows:

"(4) Upon request of a motor common carrier of passengers, a certificate of such carrier to transport passengers—

"(A) shall include authority to transport newspapers, baggage of passengers, or mail in the same motor vehicle with the passengers;

"(B) shall include authority to transport express packages in the same motor vehicle with the passengers unless the Commission finds, on the basis of evidence presented by any person objecting, that the granting of such authority is not consistent with the public interest; and

"(C) may include authority to transport baggage of passengers in a separate motor vehicle.".

(d) Section 10922 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(l)(1) If, in the case of an application by a person from a political subdivision of a foreign country for issuance under this section of a certificate to provide transportation as a motor common carrier, the Commission finds that, under the policies of such political subdivision or of such country, persons from the United States are not treated as favorably as persons from such political subdivision or country, the Commission, in its discretion, may elect not to issue the certificate.

"(2) No certificate to provide transportation as a motor common carrier shall be issued under this section to any person from a political subdivision of a foreign country unless such political subdivision or such country grants authority to persons from the United States to provide transportation by motor vehicle for compensation in such political subdivision or country.

"(3) This subsection shall only apply to foreign persons who are from countries contiguous to the United States.".

(e)(1) Section 10102 of title 49, United States Code, is amended by redesignating paragraphs (5) through (29), and any references thereto, as paragraphs (6) through (30), respectively, and by inserting after paragraph (4) the following new paragraph:

> "(5) 'commuter bus operations' means short-haul scheduled passenger service provided by motor vehicle in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, and utilized primarily by passengers using reduced fare, multiple-ride, or commutation tickets during morning and evening peak period operations.".

(2) Section 11711(f) of such title is amended by striking out "10102(10)(A)" and inserting in lieu thereof "10102(11)(A)".

(3) Section 250(a)(1) of the Internal Revenue Code of 1954 is amended by striking out "10102(18)" and inserting in lieu thereof "10102(19)".

(4)(A) Section 5201(5) of title 39, United States Code, is amended by striking out "10102(12)" and inserting in lieu thereof "10102(13)".

(B) Section 5201(6) of title 39, United States Code, is amended by striking out "10102(7)" and inserting in lieu thereof "10102(8) of title 49".

(f) Section 10322(a) of title 49, United States Code, is amended by striking out "10922(h)(2)" and inserting in lieu thereof "10922(i)(3)" and by adding at the end thereof the following new sentence: "In addition, the deadlines set forth in this section do not apply to any application filed under section 10922(c) of this subtitle for authority to provide regular-route transportation entirely in one State as a motor common carrier of passengers.".

(g) Section 10521(b) of title 49, United States Code, is amended—

(1) in clause (1) by inserting "except as provided in sections 10922(c)(2), 10935, and 11501(e) of this title," before "affect";

(2) in clause (2) by inserting "except as provided in sections 10922(c)(2) and 11501(e)," before "authorize"; and

(3) in clause (3) by inserting "except as provided in section 10922(c)(2) of this title," before "allow".

RESTRICTION REMOVAL

SEC. 7. Section 10922(i) of title 49, United States Code, as redesignated by section 6(b)(1) of this Act, is amended—

(1) by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) Not later than 180 days after the effective date of this paragraph, the Commission shall implement, by regulation, procedures to process expeditiously any application of a motor carrier of passengers who holds a certificate issued under this section (other than subsections (c)(5)(A) and (c)(5)(B)) to provide interstate transportation and who seeks to remove any operating restriction imposed by the Commission on the certificate in order to—

"(A) authorize transportation or service to intermediate points on any route covered by the certificate;

"(B) reasonably broaden regular-route service covered by the certificate to off-route points;

"(C) provide under the certificate round-trip authority where only one-way authority exists; or

"(D) authorize special and charter transportation from all points in a political subdivision of a State in any case in which special and charter transportation authority is limited by the certificate to one or more points of origin in such political subdivision.";

(2) by striking out "paragraph (1)(B)" each place it appears in paragraph (3), as redesignated by clause (1) of this section, and inserting in lieu thereof "paragraphs (1)(B) and (2)"; and

(3) by adding at the end of paragraph (3), as so redesignated, the following new sentence: "In granting or denying applications under paragraph (2) of this subsection, the Commission shall consider any significant adverse effect of the proposed restriction removal on commuter bus operations.".

MIXING OF REGULAR AND CHARTER PASSENGERS

SEC. 8. Subsection (j) of section 10922 of title 49, United States Code, as redesignated by section 6(b)(1) of this Act, is amended by redesignating clauses (1) and (2) as clauses (A) and (B), respectively, by inserting "(1)" before "A person holding", and by adding at the end of such subsection the following new paragraphs:

"(2)(A) Subject to the provisions of this paragraph, a motor common carrier of passengers who has authority under this section to provide special or charter transportation of passengers and to provide regular-route transportation of passengers may transport the special or charter passengers in the same motor vehicle with regular-route passengers.

"(B) Subparagraph (A) of this paragraph shall only apply to transportation of passengers entirely in a State if the motor common carrier of passengers has authority under the laws of such State to provide within such State special or charter transportation of passengers and regular-route transportation of passengers and if the laws of such State and the certificate, permit, or other authority under which such carrier provides intrastate transportation in such State authorizes such carrier to transport special or charter passengers in the same motor vehicle with regular-route passengers.

"(C) Special or charter transportation of passengers may only be provided under subparagraph (A) of this paragraph in the same motor vehicle as regular-route transportation of passengers if the mixing of such passengers does not interfere with the obligation of the carrier to comply with section 11101 of this subtitle.

"(5) Subject to such regulations as the Commission may issue, a person who has authority under this section to provide charter transportation of passengers may transport not to exceed three groups of charter passengers in the same motor vehicle at the same time.".

RULE OF RATEMAKING

SEC. 9. (a) Section 10701(e) of title 49, United States Code, is amended by striking out "of property" each place it appears.

(b) Section 10704(b)(2)(B) of title 49, United States Code, is amended by striking out "of property".

RATE BUREAUS

SEC. 10. (a) Paragraphs (1) and (2) of section 10706(b) of title 49, United States Code, are amended by striking out "of property" each place it appears.

(b)(1) Section 10706(b)(3)(B)(i) of title 49, United States Code, is amended by striking out "and (D)" and inserting in lieu thereof ", (D), (E), and (F)".

(2) Section 10706(b)(3)(B)(iii) of such title is amended by striking out "of property".

(3) Section 10706(b)(3)(D) of such title is amended by inserting after the first sentence the following new sentence: "This subparagraph shall not apply to any single-line rate proposed by a motor common carrier of passengers.".

(4) Section 10706(b)(3) of such title is amended by redesignating subparagraphs (E) and (F), and any references thereto, as subparagraphs (G) and (H), respectively, and by inserting after subparagraph (D) the following new subparagraphs:

"(E) On and after January 1, 1984, no agreement approved under this subsection may provide for discussion of or voting upon any single-line rate proposed by a motor common carrier of passengers. On and after January 1, 1984, no agreement approved under this subsection may permit a motor common carrier of passengers to discuss or to vote on any joint rate related to any interline movement unless the carrier can practicably participate in such movement. This subparagraph shall not apply to any rate applicable to special or charter transportation. This subparagraph and subparagraph (B)(i)(II) of this paragraph shall not apply to the following:

"(i) any general rate increase or decrease as defined by the Commission and subject to such notice requirements as the Commission may specify by regulation if discussion of such increase or decrease is limited to industry average carrier costs and, after January 1, 1984, does not include discussion of individual markets or particular single-line rates or joint rates;

"(ii) changes in tariff structures if discussion of such changes is limited to industry average carrier costs and, after January 1, 1984, does not include discussion of individual markets or particular single-line rates or joint rates;

"(iii) publishing of tariffs, filing of independent actions for individual member carriers, providing of support services for members, and changes in rules or regulations which are of at least substantially general application throughout the area in which such changes will apply;

"(iv) discussion of and voting on rates for unlimited passenger travel.

"(F) After the effective date of the Bus Regulatory Reform Act of 1981, no agreement approved under this subsection may provide for discussion of or voting upon any rate applicable to special or charter transportation proposed by a motor common carrier of passengers. This subparagraph shall not apply to publication of such rate.".

(c) Subsection (b) of section 10706 of title 49, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) Notwithstanding any other provision of this subtitle (other than paragraph (3)(F) of this subsection, relating to special and charter transportation of passengers), before January 1, 1984, the Commission may not take any action which would, on the basis of the type of carrier service involved (including service by carriers singly or in combination with other carriers), result in the exclusion of one or more motor common carriers of passengers from discussion or voting under agreements authorized by this subsection on matters concerning rates, allowances, or divisions, except that before January 1, 1984, the Commission may issue regulations which take effect on or after January 1, 1984, to carry out the provisions of paragraph (3)(E) of this subsection.".

(d) The first sentence of section 10706(c) of title 49, United States Code, is amended by striking out "of property".

(e)(1) Paragraph (2) of section 14(b) of the Motor Carrier Act of 1980 (94 Stat. 806) is amended to read as follows:

"(2) The Study Commission shall make (A) a full and complete investigation and study of the collective ratemaking process for all rates of motor common carriers of property and upon the need or lack of need for continued antitrust immunity therefor, and (B) a full and complete investigation and study of the collective ratemaking process for all rates of motor common carriers of passengers and upon the need or lack of need for continued antitrust immunity therefor. Each such study shall estimate the impact of the elimination of such immunity upon rate levels and rate structures and describe the impact of the elimination of such immunity upon the Interstate Commerce Commission and its staff. Each such study shall give special consideration to the effect of the elimination of such immunity upon rural areas and small communities.".

(2) Paragraph (3) of such section 14(b) is amended—

(A) by striking out "ten members" and inserting in lieu thereof "thirteen members";

(B) by striking out "and" at the end of clause (B); and

(C) by striking out the period at the end of such paragraph and inserting in lieu thereof a semicolon and the following:

"(D) three members of the public appointed by the President, one who is a motor common carrier of passengers receiving $3,000,000 or more per year in revenues from motor common carrier of passengers operations, one who is a motor common carrier of passengers receiving less than $3,000,000 per year from motor common carrier of passengers operations, and one who is not affiliated with the motor common carrier industry.

No member of the Study Commission who is appointed under clause (C) of this paragraph shall vote on any matter before the Commission related to motor common carriers of passengers, and no member of the Study Commission who is appointed under clause (D) of this paragraph shall vote on any matter before the Study Commission related to motor common carriers of property.".

(3) Paragraph (4) of such section 14(b) is amended by striking out the first two sentences and inserting in lieu thereof the following:

"(4) The Study Commission shall submit to the President and the Congress its final report on the collective ratemaking process applicable to motor common carriers of property not later than January 1, 1983, and its final report on the collective ratemaking process applicable to motor common carriers of passengers not later than January 1, 1984. Such reports shall include, but not be limited to, the findings and recommendations of the Study Commission. The Study Commission shall cease to exist 6 months after submission of the last of such reports.".

(f) Any organization established pursuant to an agreement entered into by motor common carriers of passengers and approved by the Commission prior to the effective date of this Act under section 10706(c) of title 49, United States Code, may continue to function pursuant to such agreement until a new or amended agreement is finally disposed of by the Commission under section 10706 of title 49, United States Code, as amended by this section, so long as (1) such new or amended agreement is submitted to the Commission for approval within 120 days of such effective date, and (2) such organization complies with this section (including amendments made by this section and regulations issued under such amendments) during the period such new or amended agreement is being prepared, submitted to, and considered by the Commission.

ZONE OF RATE FREEDOM

SEC. 11. (a) Subsection (d) of section 10708 of title 49, United States Code, is amended by redesignating paragraph (4) of such subsection, and any references thereto, as paragraph (6) and inserting after paragraph (3) the following new paragraphs:

"(4) Notwithstanding any other provision of this title, the Commission may not investigate, suspend, revise, or revoke any single-line rate proposed by a motor common carrier of passengers, or joint rate proposed by one or more such carriers, applicable to any transportation (other than special or charter transportation) on the grounds that such rate is unreasonable on the basis that it is too high or too low if—

"(A) the carrier or carriers notify the Commission that they wish to have the rate considered pursuant to this subsection; and

"(B) the aggregate of increases and decreases in any such rate is not more than 10 percent above the rate in effect one year prior to the effective date of the proposed rate, nor more than 20 percent below the lesser of the rate in effect on the effective date of the Bus Regulatory Reform Act of 1981 (or, in the case of any rate which the carrier or carriers first establish after such date for a service not provided by the carrier or carriers on such date, such rate on the date such rate first becomes effective), or the rate in effect one year prior to the effective date of the proposed rate.

"(5) The Commission, by rule, may increase the percentage which first appears in paragraph (4)(B) of this subsection (relating to the upper limit of the zone of ratemaking freedom) if it finds that—

"(A) there is sufficient actual and potential competition to regulate rates and there are benefits to the traveling public from further rate flexibility; or

"(B) such increase is necessary to allow motor common carriers of passengers to meet the costs of inflation;

except that the Commission may not increase such percentage by more than 10 percentage points during any 1-year period.".

(b) Paragraph (6) of section 10708(d) of title 49, United States Code, as redesignated by subsection (a) of this section, is amended by inserting after the first sentence the following new sentence: "Evidence that any motor common carrier of passengers established pursuant to this subsection a joint or single-line rate applicable to transportation over any route which is the same as or similar to a joint rate applicable to transportation over such route which such carrier together with one or more other motor common carriers of passengers established pursuant to this subsection shall not be in and of itself sufficient to establish a violation of any such antitrust law.".

RATES FOR SPECIAL AND CHARTER TRANSPORTATION

SEC. 12. (a) Section 10708 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of this title, the Commission may not investigate, suspend, revise, or revoke any rate proposed by a motor common carrier of passengers applicable to special or charter transportation on the grounds that such rate is unreasonable. Nothing in this subsection shall limit the Commission's authority to suspend and investigate proposed rates on the basis that such rates may violate the provisions of section 10741 of this title or constitute predatory practices in contravention of the transportation policy set forth in section 10101(a) of this title.".

(b) Section 10762(c)(3) of title 49, United States Code, is amended—

(1) in the second sentence by inserting "and motor common carrier of passengers with respect to special or charter transportation" after "a rail carrier"; and

(2) by adding at the end thereof the following new sentence: "In the case of a motor common carrier of passengers, a proposed rate change resulting in an increased rate or a new rate applicable to special or charter transportation shall not become effective for 30 days after the notice is published and a proposed rate change resulting in a reduced rate applicable to special or charter transportation shall not become effective for ten days after the notice is published.".

MOTOR CONTRACT CARRIERS

SEC. 13. (a) Section 10923 of title 49, United States Code, is amended—

(1) in subsection (b) by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) The provisions of paragraph (2) of subsection (a) of this section shall not apply to applications under this section for authority to provide transportation as a motor contract carrier of passengers. The requirement that persons issued permits under this section as motor contract carriers of passengers be fit, willing, and able includes, among other things, financial fitness, operational fitness, and safety fitness."; and

(2) by adding at the end thereof the following new subsection:

"(f)(1) If, in the case of an application by a person from a political subdivision of a foreign country for issuance under this section of a permit to provide transportation as a motor contract carrier, the Commission finds that, under the policies of such political subdivision or of such country, persons from the United States are not treated as favorably as persons from such political subdivision or country, the Commission, in its discretion, may elect not to issue the permit.

"(2) No permit to provide transportation as a motor contract carrier shall be issued under this section to any person from a political subdivision of a foreign country unless such political subdivision or such country grants authority to persons from the United States to provide transportation by motor vehicle under continuing agreements in such political subdivision or country.

"(3) This subsection shall only apply to foreign persons who are from countries contiguous to the United States.".

(b) Subsection (e) of section 10925 of title 49, United States Code, is amended—

(1) by striking out "of property" each place it appears;

(2) by striking out "section 10922(b)" each place it appears and inserting in lieu thereof "section 10922"; and

(3) in paragraph (2)—

(A) by striking out "transportation"; and

(B) by striking out "of the same property" and inserting in lieu thereof "the same type of transportation".

BROKERS

SEC. 14. (a) Subsection (a) of section 10924 of title 49, United States Code, is amended by striking out "passengers or".

(b) Subsection (b) of section 10924 of title 49, United States Code, is amended—

(1) by inserting "passengers or" before "property (other than household goods)";

(2) by redesignating clauses (1) and (2), and any references thereto, as clauses (A) and (B), respectively;

(3) by inserting "(1)" before "The Interstate Commerce Commission"; and

(4) by adding at the end thereof the following new paragraphs:

"(2) The requirement that persons issued licenses to be brokers for transportation of passengers under this subsection be fit, willing, and able includes, among other things, financial fitness, operational fitness, and safety fitness.

"(3) With respect to an application for a license to authorize a person to be a broker for transportation of passengers, the Commission may not make any finding under paragraph (1) of this subsection which is based upon general findings developed in rulemaking proceedings.".

(c) Section 10922 of title 49, United States Code, is further amended by adding at the end thereof the following new subsection:

"(m) A motor common carrier of passengers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall not provide transportation through a broker who does not hold a license issued under section 10924 of this title.".

(d) Section 10923 of title 49, United States Code, is further amended by adding at the end thereof the following new subsection:

"(g) A motor contract carrier of passengers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall not provide transportation through a broker who does not hold a license under section 10924 of this title.".

TEMPORARY AND EMERGENCY TEMPORARY AUTHORITY

SEC. 15. Section 10928 of title 49, United States Code, is amended—

(1) in subsection (a) by striking out "motor carrier of passengers or" each place it appears;

(2) in subsection (b)(1) by striking out "of property" each place it appears; and

(3) in subsection (c)(1) by striking out "of property" each place it appears and by inserting after "not more than 90 days" the following: "and, in addition, in the case of a motor carrier of passengers, the Commission may extend such authority for a period of more than 90 days but not more than 180 days if no other motor carrier of passengers is providing transportation to the place or in the area".

EXIT POLICY

SEC. 16. (a) Subchapter II of chapter 109 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 10935. Discontinuing bus transportation in one State

"(a) When a motor common carrier of passengers having intrastate authority under the laws of a State, and interstate authority under a certificate issued under section 10922 of this subchapter, to provide transportation over any route to any point in such State has proposed to discontinue providing transportation over such route to such point or to reduce its level of service over such route to such point to a level which is less than one trip per day (excluding Saturdays and Sundays) and the carrier has requested the department, agency, or instrumentality of such State having jurisdiction over granting such discontinuance or reduction for permission to discontinue such intrastate transportation or to reduce its level of service to a level which is less than one trip per day (excluding Saturdays and Sundays) and the request has been denied (in whole or in part) or such department, agency, or instrumentality has not acted finally (in whole or in part) on the request by the 120th day after the carrier made the request, the carrier may petition the Commission for such permission.

"(b) When a petition is filed under subsection (a) of this section, the carrier shall certify that he has notified (1) the Governor of the State in which such transportation is provided, (2) the State authority having jurisdiction over granting discontinuances of transportation by motor common carriers of passengers and reductions in levels of service by such carriers, (3) local governments having jurisdiction over areas which would be affected if such petition is granted, and (4) such other interested persons as the Commission may specify by regulation.

"(c) Any person (including a department, agency, or instrumentality of a State or local government) may object to the Commission to the granting of permission to any motor common carrier of passengers to discontinue or reduce transportation under this section.

"(d) If no person objects under subsection (c) of this section to the granting of permission to discontinue or reduce transportation under this section within 20 days after the carrier files with the Commission the petition for such discontinuance or reduction, the Commission shall grant such permission at the end of such 20-day period.

"(e)(1) Subject to paragraph (2) of this subsection, if, within 20 days after a carrier files a petition for permission to discontinue providing intrastate transportation over any route to any point or to reduce its level of service over such route to such point to a level which is less than one trip per day (excluding Saturdays and Sundays), any person objects under subsection (c) of this section to the Commission to the granting of such permission, the Commission shall grant such permission unless the Commission finds, on the basis of evidence presented by the person objecting to the granting of such permission, that such discontinuance or reduction is not consistent with the public interest or that continuing the transportation, without the proposed discontinuance or reduction, will not constitute an unreasonable burden on interstate commerce.

"(2) The Commission shall only grant permission to a carrier to discontinue intrastate transportation over any route to any point under this subsection if such carrier has applied for authority to discontinue its interstate transportation over such route to such point under section 10925(b) of this subchapter and the Commission has granted or will grant such authority.

"(3) If any person objects under subsection (c) of this section to the granting of permission to discontinue or reduce transportation under this section within 20 days after the carrier files with the Commission the petition for such discontinuance or reduction, the carrier, within 15 days after the filing of such objection with the Commission, shall furnish to the Commission and to objecting persons—

"(A) an estimate of the annual subsidy required, if any, to continue the service;

"(B) traffic, revenue, and other data necessary to determine the amount of annual financial assistance, if any, which would be required to continue the service; and

"(C) such other information as the Commission may require by regulation.

The Commission shall take final action upon such petition not later than 90 days after the date the carrier files such petition.

"(f) Before a discontinuance or reduction in level of service proposed in a petition filed by a carrier under subsection (a) of this section has become effective, the Commission may order the carrier to continue any part of the intrastate transportation for not to exceed the 180-day period beginning on the date the carrier files such petition with the Commission.

"(g) In making a finding under subsection (e)(1) of this section, the Commission shall consider, to the extent applicable, at least the following:

"(1) the national transportation policy of section 10101 of this title;

"(2) whether the motor common carrier of passengers has received an offer of, or is receiving, financial assistance to provide the transportation to be discontinued or reduced from a financially responsible person (including a governmental authority);

"(3) in the case of a petition to discontinue transportation to any point, whether the transportation is the last motor carrier of passenger service to such point and whether a reasonable alternative to such service is available;

"(4) whether granting such petition will have a significant adverse effect on commuter bus operations.

"(h) This section shall not apply to any carrier owned or controlled by a State or local government.".

(b) The analysis for subchapter II of chapter 109 of title 49, United States Code, is amended by inserting

"10935. Discontinuing bus transportation in one State."

after

"10934. Household goods agents.".

(c) Section 10322(a) of title 49, United States Code, is amended by inserting "10935," after "10934(c),".

DISCRIMINATORY STATE REGULATION OF RATES AND PRACTICES

SEC. 17. (a)(1) Section 11501 of title 49, United States Code, is amended by redesignating subsection (e), and any references thereto, as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e)(1) The Commission shall prescribe any rate, rule, or practice applicable to transportation provided entirely in one State by a motor common carrier of passengers providing transportation subject to jurisdiction of the Commission under subchapter II of chapter 105 of this title—

"(A) if the carrier has requested the department, agency, or instrumentality of such State having jurisdiction over such rate, rule, or practice for permission to establish such rate, rule, or practice and the request has been denied (in whole or in part) or the State authority has not acted finally (in whole or in part) on the request by the 120th day (or, in the case of a practice related to scheduling of such transportation, by the 60th day) after the carrier made the request; and

"(B) if the Commission finds that the rate, rule, or practice in effect and applicable to such intrastate transportation causes unreasonable discrimination against or imposes an unreasonable burden on interstate or foreign commerce.

"(2) For purposes of paragraph (1)(B) of this subsection, there shall be a rebuttable presumption that—

"(A) any rate, rule, or practice applicable to transportation provided by a motor common carrier of passengers entirely in one State imposes an unreasonable burden on interstate commerce if the Commission finds that—

"(i) such rate, rule, or practice results in the carrier charging a rate for such transportation which is lower than the rate such carrier charges for comparable interstate transportation of passengers;

"(ii) on the basis of evidence presented by the carrier, that as a result of such rate, rule, or practice such carrier does not receive revenues from such transportation which exceed the variable costs of providing such transportation; or

"(iii) the department, agency, or instrumentality of such State having jurisdiction over such rate, rule, or practice failed to act finally (in whole or in part) on the request of the carrier to establish such rate, rule, or practice by the 120th day (or, in the case of a practice related to scheduling of such transportation, by the 60th day) after the date the carrier made the request;

"(B) any rate applicable to transportation entirely in one State imposes an unreasonable burden on interstate commerce if the Commission finds that the most recent general rate increase applicable to transportation provided by motor common carriers of passengers in such State is less than the most recent general rate increase applicable to interstate transportation provided by motor common carriers of passengers under this subtitle; and

"(C) any practice related to scheduling of transportation provided by a motor common carrier of passengers entirely in one State on any route imposes an unreasonable burden on interstate commerce if the Commission finds that the practice which the carrier proposes to establish would conform the schedule applicable to such transportation on such route to the schedule applicable to interstate transportation provided by the carrier on such route.

"(3)(A) A motor common carrier of passengers must file an application with the Commission for prescription under this subsection of a rate, rule, or practice applicable to transportation provided entirely in one State by such carrier. When such application is filed with the Commission, the carrier shall certify that he has notified (i) the Governor of such State, (ii) the department, agency, or instrumentality of such State which denied, or failed to take action on, the request of such carrier related to such rate, rule, or practice, and (iii) such other interested persons as the Commission may specify by regulation. The Commission shall take final action on any such application not later than 60 days after such application is filed with the Commission; except that, in the case of an application for prescription of a practice related to the schedule applicable to intrastate transportation provided by such carrier, the Commission shall take final action on such application not later than 30 days after such application is filed.

"(B) The Commission shall establish, by regulation, procedures for processing applications under this subsection.

"(4) This subsection shall not apply to any carrier owned or controlled by a State or local government.".

(2) Subsection (f) of section 11501 of title 49, United States Code, as redesignated by paragraph (1) of this subsection, is amended by inserting "(1)" after "take action" and by inserting ", or (2) with respect to a rate, rule, or practice of a motor common carrier of passengers, in accordance with the procedures established by the Commission under subsection (e)(3)(B) of this section" after "a full hearing".

(b) Section 10322(a) of title 49, United States Code, is amended by inserting "or 11501(e)" after "section 10934".

(c) The Interstate Commerce Commission, in consultation with each national association representing State departments, agencies, and instrumentalities having jurisdiction over motor common carrier transportation of passengers, shall cooperate with each such department, agency, or instrumentality of a State for the purpose of establishing standards and procedures (including timing requirements) for rates, rules, and practices applicable to intrastate transportation provided by motor common carriers of passengers who provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of subtitle IV of title 49, United States Code, which are—

(1) to the extent feasible, uniform among the States; and

(2) consistent with the standards and procedures established by the Interstate Commerce Commission

under such subtitle for regulation of interstate transportation provided by motor common carriers of passengers.

(d) It is the sense of Congress that each State should revise its standards and procedures (including timing requirements) for rates, rules, and practices applicable to intrastate transportation provided by motor common carriers of passengers to conform such standards and procedures to the standards and procedures for rates, rules, and practices applicable to interstate transportation provided by motor carriers of passengers not later than two years after the effective date of this Act.

(e) Not later than thirty months after the effective date of this Act, the Interstate Commerce Commission shall report to the Congress on the results of its efforts to establish uniform standards and procedures applicable to motor common carrier of passengers rates, rules, and practices.

FINANCIAL RESPONSIBILITY

SEC. 18. (a) The Secretary of Transportation shall establish regulations to require minimal levels of financial responsibility sufficient to satisfy liability amounts to be determined by the Secretary covering public liability and property damage for the transportation of passengers for hire by motor vehicle in the United States from a place in a State to a place in another State, from a place in a State to another place in such State through a place outside of such State, and between a place in a State and a place outside of the United States.

(b) The minimal level of financial responsibility established by the Secretary under subsection (a) of this section—

(1) for any vehicle with a seating capacity of more than fifteen passengers shall not be less than $5,000,000, except that the Secretary, by regulation, may reduce such amount (but not to an amount less than $2,500,000) for any class of such vehicles or operations for the two-year period beginning on the effective date of the regulations issued under such subsection or any part of such period if the Secretary finds that such reduction will not adversely affect public safety and will prevent a serious disruption in transportation service; and

(2) for any vehicle with a seating capacity of fifteen passengers or less shall not be less than $1,500,000, except that the Secretary, by regulation, may reduce such amount (but not to an amount less than $750,000) for any class of such vehicles or operations for the two-year period beginning on the effective date of the regulations issued under such subsection or any part of such period if the Secretary finds that such reduction will not adversely affect public

safety and will prevent a serious disruption in transportation service.

(c)(1) If, at the end of the one-year period beginning on the effective date of this Act, the Secretary has not established regulations to require minimal levels of financial responsibility as required by subsection (a) of this section for any class of transportation of passengers, the levels of financial responsibility for such class of transportation shall be the $5,000,000 amount set forth in subsection (b)(1) of this section in the case of motor vehicles with a seating capacity of more than fifteen passengers and the $1,500,000 amount set forth in subsection (b)(2) of this section in the case of motor vehicles having a seating capacity of fifteen passengers or less, until such time as the Secretary, by regulation, changes such amount under this section.

(2) Notwithstanding the provisions of subsection (b) of this section, the Secretary may only make reductions in the $5,000,000 and $1,500,000 amounts set forth in such subsection for the two-year period beginning on the three hundred and sixty-sixth day following the effective date of this Act or any part of such period.

(d) Financial responsibility may be established under this section by any one or combination of the following methods acceptable to the Secretary: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. The Secretary shall establish, by regulation, methods and procedures to assure compliance with this section.

(e)(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and opportunity for a hearing, to have knowingly violated this section or a regulation issued under this section shall be liable to the United States for a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of

such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(f) This section shall not apply—

(1) to a motor vehicle transporting only school children and teachers to or from school;

(2) to a motor vehicle providing taxicab service and having a seating capacity of less than seven passengers and not operated on a regular route or between specified points; and

(3) to a motor vehicle carrying less than sixteen individuals in a single, daily roundtrip to commute to and from work.

(g) For purposes of this section, the term—

(1) "Secretary" means the Secretary of Transportation; and

(2) "State" means a State of the United States and the District of Columbia.

(h) Section 10927(a)(1) of title 49, United States Code, is amended by inserting after "Motor Carrier Act of 1980" the following: ", in the case of a motor carrier of property, or section 18 of the Bus Regulatory Reform Act of 1981, in the case of a motor carrier of passengers".

SECURITIES

SEC. 19. (a)(1) Subsection (a) of section 11302 of title 49, United States Code, is amended in clauses (1) and (2) by inserting "of property" after "carriers" each place it appears.

(2) Subsection (b) of such section is amended by inserting "(1)" before "Section 11301" and by adding at the end thereof the following new paragraph:

"(2) Section 11301 of this title shall not apply to any corporation authorized by the Commission to acquire control of one or more motor carriers if the revenues of such corporation from motor carrier operations are derived principally from motor carrier of passenger operations.".

(b) Section 3(a)(6) of the Securities Act of 1933 (15 U.S.C. 77c(a)(6)) is amended by inserting "of property" after "motor carrier".

(c) The amendments made by this section shall not be construed to effect the authority of the Commission under sections 11343 and 11344 of title 49, United States Code, to impose conditions on any transaction referred to in section 11343 of such title involving a motor common carrier of passengers.

TAX DISCRIMINATION

SEC. 20. Section 11503a(a)(3) of title 49, United States Code, is amended by striking out "of property".

MERGER PROCEDURE

SEC. 21. (a) Section 11345a of title 49, United States Code, is amended by striking out

"§ 11345a. Consolidation, merger, and acquisition of control: motor carrier of property procedure"

and inserting in lieu thereof

"§ 11345a. Consolidation, merger, and acquisition of control: motor carrier procedure".

(b) Subsection (a) of such section is amended by striking out "of property".

(c) The analysis for subchapter III of chapter 113 of title 49, United States Code, is amended by striking out

"11345a. Consolidation, merger, and acquisition of control: motor carrier of property procedure."

and inserting in lieu thereof

"11345a. Consolidation, merger, and acquisition of control: motor carrier procedure.".

(d) Section 11344(b) of title 49, United States Code, is amended by redesignating paragraphs (1), (2), (3), (4), and (5) (and references thereto) as subparagraphs (A), (B), (C), (D), and (E), respectively, by inserting "(1)" before "In a proceeding", and by adding at the end of such section the following new paragraph:

"(2) In a proceeding under this section which involves only carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II or III of chapter 105 of this title, the Commission shall consider at least the following:

"(A) the effect of the proposed transaction on the adequacy of transportation to the public.

"(B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

"(C) the total fixed charges that result from the proposed transaction.

"(D) the interest of carrier employees affected by the proposed transaction.".

(e) Section 11344(d) of title 49, United States Code, is amended by adding at the end thereof the following new sentence: "The provisions of this subsection do not apply to any proceeding under this section which involves only carriers providing transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title.".

SAFETY ENFORCEMENT

SEC. 22. (a) Section 10925(d) of title 49, United States Code, is amended by redesignating paragraph (2) (and any references thereto) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, upon petition by the Secretary of Transportation, the Commission may suspend a certificate or permit of a motor carrier of passengers if the Commission finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.".

(b) Paragraph (3) of section 10925(d) of title 49, United States Code, as redesignated by subsection (a) of this section, is amended by inserting before the period at the end thereof the following: "or, in the case of a suspension under paragraph (2) of this subsection, until the Commission revokes such suspension".

ILLEGAL OPERATIONS

SEC. 23. Section 11901(g) of title 49, United States Code, is amended by inserting before the period at the end of the first sentence the following: "; except that, in the case of a person who does not have authority under this subtitle to provide transportation of passengers, or an officer, agent, or employee of such person, that does not comply with section 10921 of this title with respect to providing transportation of passengers, the amount of the civil penalty shall not be more than $1,000 for each violation and $500 for each additional day the violation continues".

ADMINISTRATIVE ASSISTANCE

SEC. 24. Section 10321(b) of title 49, United States Code, is amended—

(1) by striking out "and" at the end of clause (2);

(2) by striking out the period at the end of such section and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new clause:

"(4) consistent with the transportation policy of section 10101 of this title, provide administrative assistance to small motor common carriers of passengers and local governments preparing for proceedings under sections 10922(c)(2), 10935, and 11501(e) of this title.".

STUDY OF CITIZEN BAND RADIOS ON BUSES

SEC. 25. (a) The Secretary of Transportation shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the use of citizen band radios on motor vehicles providing transportation of passengers subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of title 49, United States Code, by the operators of such vehicles. Such study shall determine, at a minimum, the following:

(1) the effect on safety if such operators are authorized to use such radios; and

(2) the effect on safety, health, and convenience of the passengers of such vehicles if such operators are authorized to use such radios.

(b) The Secretary of Transportation shall request the National Academy of Sciences to submit to the Secretary and the Congress, within six months after entering into arrangements with the National Academy of Sciences for conducting the study under subsection (a) of this section but in no case later than one year after the effective date of this Act, a report on the results of such study along with its recommendations concerning whether operators of motor vehicles providing transportation of passengers should be allowed to use citizen band radios. The Secretary shall furnish to such Academy, at its request, any information which such Academy deems necessary for the purpose of conducting such study.

(c) Not later than sixty days after the National Academy of Sciences submits its report to the Secretary of Transportation under subsection (b) of this section, the Secretary of Transportation shall initiate a rulemaking proceeding to determine whether operators of motor vehicles providing transportation of passengers subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of title 49, United States Code, should be allowed to use citizen band radios in such vehicles. In making such determination, the Secretary of Transportation shall give substantial weight to the recommendations and conclusions of the National Academy of Sciences. Such rulemaking proceeding shall be completed not later than one hundred and twenty days after such proceeding is commenced. If the Secretary issues a rule or regulation which recommends that operators of such vehicles be allowed to temporarily install and operate citizen band radios in such vehicles, the Secretary of Transportation shall issue regulations establishing guidelines for the use of such radios in such vehicles in order to ensure that the public safety is adequately protected.

(d)(1) Subchapter I of chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 11111. Use of citizen band radios on buses

"(a)(1) A motor carrier of passengers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall allow the operator of any motor vehicle providing such transportation to temporarily install and operate a citizen band radio in such vehicle if the Secretary of Transportation issues a rule or regulation which recommends that operators of such vehicles be allowed to temporarily install and operate such radios in such vehicles.

"(2) Citizen band radios installed and operated in motor vehicles providing transportation of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall be installed and operated in accordance with the guidelines established by the Secretary of Transportation under section 25(c) of the Bus Regulatory Reform Act of 1981.

"(b) The Commission shall issue such regulations as it considers necessary to carry out this section.".

(2) The analysis for subchapter I of chapter 111 of title 49, United States Code, is amended by inserting

"11111. Use of citizen band radios on buses."

after

"11110. Household goods carrier operations.".

(e) Section 11702(a)(2) of title 49, United States Code, is amended by inserting "or 11111" after "11109".

(f) This section shall not be construed to provide new spending authority within the meaning of section 401(c)(2)(A) of the Congressional Budget Act of 1974.

BUS TERMINAL STUDY

SEC. 26. (a) The Secretary of Transportation and the Interstate Commerce Commission shall conduct a full investigation and study of the ownership, location, and adequacy of bus terminals and their capacity to provide passenger service in accordance with the transportation policy set forth in section 10101 of title 49, United States Code. A report on the results of such investigation and study, including legislative recommendations, shall be submitted to the President and Congress not later than December 31, 1982.

(b) The report under this section shall include an analysis of at least the following:

(1) the pattern of ownership of bus terminals, including public and private ownership;

(2) the desirability of terminals for more than one mode of transportation and their impact on urban development;

(3) the desirability of governmental assistance in the construction of nonurban bus terminals.

EMPLOYEE PROTECTION

SEC. 27. (a)(1) Each individual who is eligible for protection under this section and whose employment is terminated by a motor common carrier of passengers (other than for cause) prior to the last day of the ten-year period beginning on the date of enactment of this Act shall have a right of priority reemployment, in his or her occupational specialty, by such carrier at such time as such carrier is hiring additional employees.

(2) Any motor common carrier of passengers hiring additional employees shall have a duty to hire an individual eligible for protection under this section, in his or her occupa-

tional specialty, before hiring any other individual if such individual—

(A) was terminated previously by such carrier;

(B) has applied for a vacant position for which such carrier is accepting applications; and

(C) at the time the application is filed, has notified such carrier that he or she is eligible for protection under this section.

(b)(1) Each individual who is eligible for protection under this section and whose employment is terminated by a motor common carrier of passengers (other than for cause) prior to the last day of the ten-year period beginning on the date of enactment of this Act shall have a right of consideration for employment, in his or her occupational specialty, by any other motor common carrier of passengers who is hiring additional employees.

(2) Each motor common carrier of passengers who is hiring additional employees shall have a duty to consider for employment, in his or her occupational specialty, an individual who is eligible for protection under this section if such individual—

(A) has applied for a vacant position for which such carrier is accepting applications; and

(B) at the time the application is filed, has notified such carrier that he or she is eligible for protection under this section.

(c) An individual (other than a member of a board of directors or an officer of a corporation) who was employed by a motor common carrier of passengers for the two-year period ending on the date of enactment of this Act shall be eligible for protection under this section if, upon application of such individual, the Commission determines that the employment of such individual has been terminated by a motor common carrier of passengers having intrastate authority under the laws of a State, and interstate authority under a certificate issued under section 10922 of title 49, United States Code, to provide transportation over any route to any point in such State as a result of such carrier—

(1) discontinuing (A) interstate service over such route under section 10925(b) of such title, and (B) intrastate service over such route (i) under section 10935 of such title, or (ii) under the laws of such State;

(2) reducing (A) interstate service over such route under subtitle IV of such title, and (B) intrastate service over such route (i) under section 10935 of such title, or (ii) under the laws of such State; or

(3) substantially reducing (A) interstate service over such route under subtitle IV of such title, and (B)

intrastate service over such route (i) under section 11501(e) of such title, or (ii) under the laws of such State.

In a proceeding to determine whether an individual is eligible for protection under this section, it shall be the obligation of the individual whose employment has been terminated by a motor common carrier of passengers to identify to the Commission the discontinuance or reduction which such individual alleges resulted in such termination and to specify the pertinent facts; and it shall be the obligation of any carrier contesting the eligibility of the individual for protection under this section to prove that the discontinuance or reduction was not a contributing factor causing such termination.

(d) The Commission shall establish, maintain, and periodically publish a comprehensive list of jobs available with class I motor carriers of passengers. Such list shall include that information and detail, such as job descriptions and required skills, the Commission deems relevant and necessary. In addition to publishing the list, the Commission shall make every effort to assist individuals eligible for protection under this section in finding other available employment. The Commission may require each class I motor carrier of passengers to file with the Commission the reports, data, and other information necessary to fulfill the duties of the Commission under this subsection.

(e) For the purposes of this section:

(1) A motor common carrier of passengers shall not be considered to be hiring additional employees when it recalls any of its own furloughed employees.

(2) An individual who is furloughed by a motor common carrier of pasengers and who still has a right of recall by such carrier shall not be considered to be terminated.

(3) The term "Commission" means the Interstate Commerce Commission.

(4) The term "motor common carrier of passengers" means a person who has authority under section 10922 of title 49, United States Code, to provide transportation of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of such title.

(5) The term "class I motor carrier of passengers" means a motor common carrier of passengers having annual gross revenues from motor common carrier of passengers operations in excess of $3,000,000.

(f) Nothing in this section shall be construed to affect (1) an affirmative action plan or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan.

(g) This section shall not apply (1) to any carrier owned or controlled by a State or local government, and (2) to any periodic discontinuance of or reduction in motor carrier of passenger service which is seasonal in nature.

(h) The Commission shall issue such rules and regulations as are necessary to carry out this section. Initial rules and regulations shall be promulgated within six months after the effective date of this Act.

(i) The provisions of this section shall terminate on the last day of the twelve-year period beginning on the effective date of this Act.

NEW BUDGET AUTHORITY

SEC. 28. This Act (including the amendments made by this Act) shall not be construed to authorize the enactment of new budget authority or new spending authority for the fiscal year ending September 30, 1982.

EFFECTIVE DATE

SEC. 29. This Act shall take effect on the sixtieth day after the date of enactment of this Act.

Passed the House of Representatives November 19, 1981.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

By THOMAS E. LADD,
Assistant to the Clerk.

Senator DANFORTH. Thank you, Senator Cannon.

Our first witness is the Secretary of Transportation, Drew Lewis. Mr. Secretary.

STATEMENT OF HON. DREW LEWIS, SECRETARY OF TRANSPORTATION, ACCOMPANIED BY JOHN FOWLER, GENERAL COUNSEL; AND CHARLES SWINBURN, DEPUTY ASSISTANT SECRETARY FOR POLICY

Secretary LEWIS. With your permission, we would like our written statement to be part of the record and I would like to make a brief opening statement.

With me today is John Fowler, General Counsel of the Department, and Charles Swinburn, Deputy Assistant Secretary for Policy. We are here today to outline the administration's views on regulatory reform of the intercity bus industry.

As the President has made very clear, removal of unnecessary regulatory burdens is a high priority of this administration. We feel that the marketplace and not a set of regulatory standards developed in 1935 should govern the behavior of managers of the bus industry. We're really here today to consider H.R. 3663. We believe that this does provide an appropriate framework for lessening regulation of the bus industry. And in very simple terms, we would like to see it modified along two or three lines.

First of all, we feel that entry should be based solely on a new, fit and willing and able test, which would focus on the applicant's safety fitness and his ability to secure adequate insurance.

Second, we believe there should be immediate entry for intrastate service provided on scheduled interstate routes. As far as pricing freedom goes, we would eliminate all Federal rate regulation 3 years from the enactment of the act.

As far as antitrust immunity goes, we would like to phase out all immunity for bus ratemaking activities by 1985.

As far as State preemption is concerned, we would like to slightly modify the exit provisions to shorten several time deadlines imposed at the Federal level and to delete what we call a burdensome public interest test.

As far as safety is concerned, rather than legislating specific insurance levels, we would like them to be determined within the Department through rulemaking. This gives us some flexibility in terms of judging conditions in the industry and in terms of what a valid insurance claim could be.

Basically, we think we have a good bill to work with here. We are looking forward to working with this committee and with you, Mr. Chairman. And also, I would like to say that we are looking forward to working with the Chairman of the ICC, Mr. Taylor, who I believe is going to testify later today. Jointly we think we can come up with a satisfactory solution that will be acceptable not only to this committee, but to the bus industry and to the administration.

Thank you, and we are prepared to answer your questions.

Senator DANFORTH. Mr. Secretary, thank you very much. Of course, the easiest thing for us to do would be to pass the House bill. That was a bill that was worked out with a considerable amount of give and take and compromise. As far as I know, virtually everybody is in agreement with it.

Would the administration support such an approach?

Secretary **Lewis**. We would like to make the modifications that I mentioned very briefly in my opening testimony, and that are also in the written statement. At the time the House bill was passed, we agreed with the House that, rather than have lengthy debate and amendments on the floor and discussion, the bill could be passed as is, with no opposition from the administration. The idea was that we could come to the Senate and hopefully make the adjustments that we would like to have made on the House floor, and then through conference work out our mutual differences.

So we do feel that actually the original administration position was carte blanche deregulation. We feel in the Department of Transportation, and the administration now concurs with our opinion, that that is too far to go and would be moving too fast. With the modifications we have recommended, we think that will make the bill stronger in terms of its deregulatory aspects.

Senator **Danforth**. Senator **Pressler**?

Senator **Pressler**. Mr. **Lewis**, I want to ask you, in your testimony before the House subcommittee you indicated that you did not believe that a decrease in the rural bus service would be a result of regulatory reform. You should understand that these assurances are not particularly comforting to my home State.

Time and time again, I've been told that airline deregulation has resulted in the same level or increased level of service to small communities. Having flown in my home State of South Dakota many, many times, I know that this is not the case. Indeed, CAB statistics show that in the four-State upper Midwest region including South Dakota there has been a 28-percent decline in nonhub departures since airline deregulation. Many of these same nonhub communities are extremely dependent on passenger bus service, even more so now, particularly for those individuals in lower- or middle-income brackets.

With this in mind, what guarantees can you offer that the same thing will not happen after the passage of H.R. 3663, or as a result of the administration's proposals under discussion today?

Secretary **Lewis**. I think, first of all, to compare the bus industry with the airline industry is comparing apples to oranges. The cost of an intercity bus is about $138,000. The smallest jet runs about $1.8 million. For a 737, we're talking about $12 to $13 million. So the cost of providing services is much higher in the airline industry.

And I also do not think we have seen the final shakeout of what is going to happen in terms of service to your State and others. I do understand your State's service is down about 14 percent. In other States where we had concern about airline service, service is actually up now and they are getting better service than they did before. Examples are both Nevada and New Mexico.

So it does not mean that in the long term your State will necessarily be hurt by airline deregulation. That does not solve your problem now.

But coming back to the bus area, we think that through easy entry and easy exit you're going to find more innovative kinds of services in the bus industry than you saw before with the possibility of a $138,000 bus, or scaling it down to a jitney kind of a service, you will not be hurt.

Now, obviously we cannot give you a definitive assurance on that. That is our view of what will happen with bus deregulation.

Senator **Pressler**. I may be quoting somewhat one out of order, but here are some figures on the cost of entry in a small State; a bus costs $150,000, at least two drivers with total costs of approximately $30,000 apiece, and fuel costs of about $20,000 a year. You are talking about a fairly sizable investment. And although that is not as expensive as an airline, certainly it is a very expensive proposition for a small independent line.

Do you agree that these would be the costs for a minimum-sized bus company?

Secretary **Lewis**. Well, our figures we used, $138,000 which is a figure comparable to that which we are paying for transit buses that are subsidized by the Department. So we are not arguing much. But again, it depends on the size of the bus. In some smaller communities, you might be talking about one driver, a jitney service, or even a pool of the community going together for bus service.

But again, compared to the entry of aviation, there is very little comparison of costs.

Senator **Pressler**. I guess as a matter of philosophy our national transportation system was built by having carriers being assigned some very rich, profitable routes, some marginal routes and maybe some routes that are not profitable. That is how we built our national transportation system. We built interstate highways into every State on which to haul grain and other commodities. We built these highways into even sparsely populated States. Eventually some of the sparsely populated States became thickly populated. Who knows what our population shifts will be in the future.

But now under all of this deregulation, we are abandoning the common carrier principle and discarding the responsibility to bring transportation to lesser populated areas or rural areas. The same thing is true in New York, not just in the Midwest.

We are abandoning that as a concept in our society. While other major industrialized countries have not abandoned it. They have kept their national transportation system grid. We are abandoning this system in the rural and smaller towns, upper New York State, the Midwest or wherever. We are really saying to them, you are out of the ballgame.

At the same time we are saying to the big carriers, you can have things like coupon fares to fly people to major points for $89 a weekend. Yet when I go home to South Dakota it costs me nearly $500 to fly. That is more than a roundtrip to Hawaii costs. So, before we take the step of deregulating buses, I want to be sure that we are not abandoning the basic principles that made our national transportation system work.

Secretary **Lewis**. I do not believe we are, Senator. A good example is Florida, where we had deregulation and you have seen no deterioration in the service and actually an improvement in many cases. There are also some countries in the world that are going to deregulation, as you know. England has gone this direction in bus deregulation. And if you look at some of the things that are happening, for example, in rail deregulation, you actually have stronger railroads now than you had prior to deregulation.

I do not think deregulation itself is necessarily the negative that you are implying, and I think you will find that there will be adequate bus service in your State under deregulation. In some cases it could potentially even improve.

Senator **Pressler**. If the Chairman will allow me just one final comment. Florida is served by Trailways and Greyhound. A lot of the Midwestern States are not. Indeed, Florida geographically is oriented in such a fashion that it is perhaps an example of where this will work.

But to conclude. At this moment, I will have to go on record in opposition to the administration's proposals. I also have reservations about the bill until I am persuaded that we are able to take care of the lesser populated areas.

Senator **Danforth**. Senator Cannon?

Senator **Cannon**. Thank you, Mr. Chairman.

Mr. Secretary, bus transportation is improving in some areas. They tell the story in my State about the Texas gambler that came to Nevada in a $15,000 Cadillac and left in one of those $138,000 buses you were talking about.

In the Airline Deregulation Act, Congress provided a very simple and effective way of dividing up the Federal and State responsibilities. Interstate carriers are regulated only by the Federal Government and intrastate carriers are regulated only by the State involved.

Would that kind of an approach be simpler and more fair than the preemption provision that you have outlined?

Secretary **Lewis**. Well, our concern is that if you do not have some type of preemption there is no assurance that there will not be overregulation within the States, and that the service that we are trying to provide, in point of fact, will not be provided.

Actually, we would prefer to have no preemption and that was the original objective of the administration. But we do not see how you can have this kind of a bill without some preemption.

Senator **Cannon**. So it is sort of a compromise or fallback position as far as you are concerned?

Secretary **Lewis**. That is correct.

Senator **Cannon**. At one time Chairman Reese Taylor suggested that we might consider using this bus legislation to also deal with the question of entry in the trucking business. Do you feel it would be appropriate to deal with that issue in this legislation?

Secretary **Lewis**. We feel not, and it is not that we necessarily disagree in theory with what Chairman Taylor would like to do. We are afraid that if you go that direction we will end up with no bill at all, because at that point we are going to add another controversy to a bill that is already somewhat controversial, as Senator Pressler has indicated. So we would prefer to have this bill stand on its own, evaluate the merits within the bus industry, and vote this one up or down and not confuse it with motor carrier entry.

Senator **Cannon**. Would you be prepared to speculate on whether the President would sign the bus legislation that was passed by the House of Representatives if the Senate were to enact the same legislation without any changes?

Secretary LEWIS. The reason we have come back with the recommended changes here is the administration would not support the House bill as it presently stands. That is my concern as Secretary of Transportation, to try to reach a compromise that is a little more deregulatory than the House bill, but not carte blanche deregulation, which was the original recommendation which I received from the Office of Management and Budget.

Senator CANNON. So you are saying that the House bill per se would not be acceptable, but with the changes that you have recommended the President would sign that legislation?

Secretary LEWIS. That is correct.

Senator CANNON. Would you give us your views on the provisions in H.R. 3663 that deal with foreign reciprocity and direct the ICC not to grant operating authority to foreign carriers from countries where the government discriminates against American carriers?

Secretary LEWIS. At the present time this would have to be redefined, in the 2-week period that the chairman indicated we would have to put in additional material. The administration is now looking at the whole issue of reciprocity, not just in this particular industry, and has asked us not to make a specific statement on this, as a segment within a broader picture at the present time.

It is very clear that in Mexico there will be no entry for our carriers. It is not clear whether we are going to try to reach some kind of a compromise on other issues that would come back to you. And what I am really saying is I do not know the answer to your question at the present time, until we resolve a number of other issues internally.

Senator CANNON. Well, we would hope you have that done before we finish consideration of this legislation, so we could have the benefit of your views at that time.

Secretary LEWIS. Yes. I think there is even going to be a hearing here—I do not know whether it is in the Senate or the House—on this specific issue on March 25, and that is the only reason that I am deferring answering the question at the present time.

Senator CANNON. Thank you, Mr. Chairman.

Senator DANFORTH. Mr. Secretary, thank you very much.

Secretary LEWIS. Thank you.

[The statement follows:]

STATEMENT OF HON. DREW LEWIS, SECRETARY OF TRANSPORTATION

Mr. Chairman and members of the subcommittee, I am pleased to be here today to outline the Administration's views on regulatory reform of the intercity bus industry.

As President Reagan has made clear, removal of unnecessary regulatory burdens is a high priority of this Administration. Regulation of the transportation industries is a prime target for reform. Immense progress has been made over the past seven years through bipartisan efforts in both Houses of Congress and particularly in this Committee, where your efforts, as well as those of Senator Cannon, are well known. So far, regulation of the airline, railroad, and trucking industries has been addressed. Now it is time to focus on deregulation of the intercity bus industry.

The Aministration shares your interest in the intercity bus industry. It constitutes an important segment of our nation's passenger and freight transportation system. It serves more points and carries more passengers in the U.S. than any other form of intercity public transportation.

Over the years the industry has demonstrated its ability to provide good service to the public at reasonable fares and rates. This has been the case in spite of a burdensome economic regulatory system. Interstate Commerce Commission regulations govern virtually every aspect of interstate bus operations. On top of this, most States regulate the intrastate operations of interstate carriers to varying degrees.

Over the last several years, the ICCc has a taken some steps to liberalize economic regulation of the bus industry, most notably in the area of entry. Those steps appear to have benefited both the intercity bus industry and the traveling public.

We believe, however, that such action does not go far enough. This Administration firmly believes in the power of free enterprise and in the need to reduce the burden of Federal regulations. The marketplace, not a set of regulatory standards developed in 1935, should govern the behavior of the managers of the bus industry. Ultimately, we see no need for continuing any Federal economic regulation of the industry. The industry's economic nature and structure tell us that reliance on the free enterprise system should increase the efficiency of bus operations, enable the industry to utilize its energy efficiency to the maximum extent, improve profitability, and result in better service to the public. Deregulation would also eliminate unnecessary government restrictions and red tape.

Mr. Chairman, as you are aware, some States have taken steps to reduce regulation of their bus industries. Motor carrier transportation in the State of Florida was completely deregulated on July 1, 1980. About this time last year, my staff conducted a preliminary study of the effects of deregulation on intercity bus operations in Florida. We are now in the process of updating that study and the results so far, on balance, appear favorable. In addition, representatives from the State of Florida have testified that its deregulation is working well. The State of Alaska deregulated buses in June 1980 and we have been told that there has been no adverse change in service. Rather, the industry has benefited from relief from burdensome regulatory red tape. Finally, Arizona voted in a statewide referendum to deregulate trucks and buses beginning in July 1982.

The Federal Government should learn from these States and follow their example. As you will see from the rest of my testimony, Mr. Chairman, we are not advocating that Congress totally deregulate the intercity bus industry tomorrow. We do see total deregulation as a desirable endpoint, however, and we think that the actions you take this year should launch us firmly in that direction.

You presently have under consideration H.R. 3663, which passed the House last fall. Mr. Chairman, the Administration believes that H.R. 3663 provides you with the appropriate framework for lessening Federal regulation of the bus industry. The changes I am about to suggest will, I believe, appropriately flesh out that framework and give us all a bill to which we can point with pride. A marked-up version of H.R. 3663 which provides suggested language to accomplish these changes is attached to the statement I have submitted for the record and copies have been supplied to Committee staff.[1]

Let me now address each of the areas of regulation which we believe require significant change and tell you how we would alter H.R. 3663 to achieve that change.

ENTRY FREEDOM

At present, entry into this industry is governed by cumbersome procedures and restrictive tests, primarily aimed at protecting existing carriers.

We are convinced that freer entry for both the regular-route and charter and special operations sectors will result in increased competition among carriers and a wider variety of price/service options for the traveling public. In recent years, the ICC has applied more liberal entry policies and procedures with favorable results, especially for the charter and special operations sector. Further, H.R. 3663 takes several steps in the right direction, simplifying the tests to be applied by the Commission in judging new entry applications. However, the Administration believes that the entry standards of H.R. 3663 are still too restrictive, and we propose that entry for all common and contract carriers and brokers be based solely on a new fit, willing, and able test which would consist of evaluating the applicant's safety fitness and demanding proof of adequate insurance, subject to the minimum insurance standards of this Act. We believe that these are the only factors appropriate for the government to evaluate in entry cases.

The Administration's proposal would also allow immediate entry for intrastate service provided on scheduled interstate routes, including elimination of the test of unreasonable burden on interstate commerce. We see no reason to delay service to intrastate passengers on interstate routes by carriers who are already certifiably fit, willing and able.

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[1] The material referred to has been retained in the committee files.

PRICING FREEDOM

Closely related to removal of entry restrictions is the need for pricing freedom. We strongly believe that the two must be tied together. Pricing freedom will encourage competition and the setting of innovative fares, representing a great benefit to bus passengers. It will also allow carriers to more quickly tailor their services to the costs of particular operations.

H.R. 3663 provides for a zone of pricing freedom, designed to encourage independent, flexible pricing by carriers. The Administration endorses the concept of the zone, but we believe that the bus industry should eventually operate in an environment of total rate freedom. Our proposal, therefore, provides for elimination of the pricing zone three years from the date of enactment of the Act.

ANTITRUST IMMUNITY

We believe that along with pricing freedom must come the elimination of antitrust immunity for ratemaking among bus operators. As you know, Mr. Chairman, bus companies are allowed to discuss and vote upon single-line and joint-line fare changes and general rate increases and propose these changes through the bus industry rate bureau, the National Bus Traffic Association (NBTA).

We see no need for this immunity to continue. Bus companies can continue to engage in necessary administrative and ratemaking functions without immunity, so that essential interlining of passengers and express can still be performed. The Administration's mark-up of H.R. 3663 provides for total elimination of antitrust immunity for bus ratemaking activities, although to minimize any potential disruption in the industry, the immunity would be phased out, with all immunity ended by 1985. Further, we propose to eliminate the study of bus ratemaking required in H.R. 3663 from the work of the Motor Carrier Ratemaking Study Commission established under the Motor Carrier Act of 1980. We believe the case for elimination of antitrust immunity is clear, and we see no need to perform such a study.

STATE PREEMPTION

One of the most controversial issues involved in bus deregulation is what to do about the effects of state regulation on interstate operations. The issue manifests itself in two ways. First, many state regulations are presently implemented in a manner in opposition to Federal standards, and may in fact thwart deregulation at the Federal level. The bus industry has provided us with numerous examples where this appears to be the case. Second, individual state regulations requiring reporting and registration often vary significantly, creating a considerable burden for carriers.

As you know, Mr. Chairman, the Department and the ICC have been studying the issue of uniform state regulation, as directed by Congress under the requirement of Section 19 of the Motor Carrier Act of 1980. The report on this joint effort, which also investigates state regulation of buses, is far enough along for us to conclude that much state regulation of buses adversely affects interstate commerce, and that deregulation at the Federal level, absent similar action at the state level, is not sufficient. Nevertheless, this Administration realizes the importance of state authority; the Federal government will not interfere in matters that are truly state or local in nature.

We believe the approach to the problem taken in H.R. 3663 is a good one, because it involves a careful balancing of Federal and state interests. First, it permits ICC preemptive actions only in those circumstances where both intrastate and interstate commerce are involved. Second, it affords the states adequate opportunity to act before their decisions—or their inaction—can be "appealed" to the ICC. Third, it does not take a blanket preemption approach but requires that individual cases be addressed on their merits and also breaks down the issues for preemptive action by the ICC into separate and distinct areas: entry; rates, rules and practices; and exit.

As I discussed earlier, we do believe that some modification of the preemption provisions is necessary in order to ensure that carriers will be allowed sufficient freedom to enter the industry. We also believe that carriers should be able to exit markets more quickly. The Administration's proposal would shorten the time allowed the ICC in making exit determinations as well as the length of time for which carriers may be required by the ICC to continue to provide intrastate service. We would also delete the burdensome public interest test in exit determinations, although keeping a modified test for unreasonable burden on interstate commerce.

We do not believe that the Administration's proposed changes to H.R. 3663 infringe on legitimate state authority. Rather, they are designed to further reduce contradiction between the Federal and state regulatory systems.

In short, we believe H.R. 3663's approach to preemption, with our suggested modifications, is an excellent compromise between no preemption at all, on the one hand, and a blanket overriding of states' rights, on the other, Providing for no preemption would nullify much of the social benefit of what we seek to do at the Federal level. A blanket approach would ignore the legitimate rights of the states to have a hand in regulating commerce.

SAFETY

Although the intercity bus industry has a fine safety record, safety must be a continuing concern to us. We strongly support the idea of maintaining significant minimum insurance standards which is contained in H.R. 3663. Because safety and insurance are the crucial components to our proposed entry standard, however, we would have a different approach to establishing those standards. Rather than legislate specific minimum insurance levels, we would have them determined by the Secretary of Transportation through rulemaking. This flexibility is important to ensure that the standards will be responsive to demand for public safety and will be able to change with changing conditions. Further, in the Safety Enforcement section, we would require, rather than allow, the ICC to suspend a bus carrier's certificate or permit for safety reasons if it finds that the carrier has been conducting unsafe operations that are an imminent hazard to public health or property. This will provide an additional incentive for carriers to maintain safe operations.

OTHER CHANGES

The Administration's proposal contains other modifications to H.R. 3663, among them inclusion of language emphasizing the benefits of competition in the Congressional Findings and National Transportation Policy sections. In the area of mergers, we would make bus company mergers subject to the provisions of the antitrust laws.

Mr. Chairman, we believe that our proposed changes to H.R. 3663 will produce a significant intercity bus regulatory reform bill, one which will allow the marketplace, not the government, to be the true regulator of the industry. The Administration's modifications are aimed at significantly increasing competition in the intercity bus industry and further reducing regulatory burdens on the industry, while also maintaining appropriate safeguards to protect the traveling public.

DEREGULATION WILL BENEFIT THE BUS INDUSTRY AND THE PUBLIC

In conclusion, Mr. Chairman, we see no need to continue any Federal economic regulation of the intercity bus industry. We are committed to reliance on competition, not government regulation, in providing transportation services. The intercity bus industry is an essential part of our nation's transportation system. Freedom from economic regulation will increase the efficiency of bus operations, improve the financial health of the industry, and improve available service to the traveling public. Mr. Chairman, I look forward to working in the future with you and the Members of the Subcommittee, as well as the Chairman of the Interstate Commerce Commission, to achieve those ends.

That completes my prepared statement, Mr. Chairman. I would be pleased to answer any questions you or other Members of the Subcommittee might have.

Senator **Danforth**. The next witness is Reese Taylor, Chairman of the Interstate Commerce Commission.

STATEMENT OF HON. REESE H. TAYLOR, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY BOB SHEPHERD, CHIEF OF STAFF; AND JAN ROSENAK, LEGISLATIVE COUNSEL

Mr. **Taylor**. Thank you, Mr. Chairman, and I will have to apologize again for my voice. My laryngitis is still with me, unfortunately.

On my left I have my chief of staff, Bob Shepherd; and on my right Jan Rosenak, our legislative counsel.

I would like to thank you for the opportunity to appear here today to present the views of the Interstate Commerce Commission with regard to regulatory reform of the intercity motor bus industry.

Let me begin by saying that H.R. 3663 is a good start in reforming regulation of the bus industry and in providing a greatly needed impetus toward more competition in this industry. It offers a balanced approach, one that is essential to regulatory reform, by easing entry, establishing a more certain procedure for exit and providing bus companies with greater pricing flexibility.

While H.R. 3663 represents a considerable improvement over present law, the Commission believes changes should be made to insure that the bill achieves its stated policy of promoting competition and efficient transportation service.

Today I will focus on the issues we believe are at the crux of reform for this industry: eased entry, eased exit, institution of flexible pricing in conjunction with the elimination of antitrust immunity, and clarification of the Federal-State relationship.

With respect to common carriage, H.R. 3663, while maintaining the present fitness standard, eliminates the requirement of a demonstration of public support for a proposed service, but allows a protestant to show that a grant would not be consistent with the public interest.

Report language emphasizes that the fitness test, which is defined to include financial, operational and safety fitness, is intended to weed out unfit applicants, not to place additional barriers on entry or to substitute the regulatory process and bureaucratic judgment for normal business judgments.

For contract carriage and broker authority, the bill adopts a fitness only test. Unlike the common carrier provision, fitness is the sole standard.

We commend the House for eliminating the present burdensome public convenience and necessity test and the need for public support of an application. We strongly believe this change will simplify and expedite entry. However, we see no reason to have different tests for common and contract carriers. Accordingly, we urge the Senate to adopt a "fitness only" standard for all motor carriers of passengers, a standard along the lines of my legislative proposal approved by the Commission for submission to Congress and sent forward on February 10, 1982.

As you know, in that proposal we advocated a relaxation of entry standards not only for motor carriers and brokers of passengers but for motor carriers generally, as well as for water carriers and freight forwarders. We urged consideration of our proposal as a part of the bus legislation. This is still our position. Whatever is done vis a vis entry standards for motor carriers of passengers should also be applicable to these other modes.

We believe that a "fitness only" standard would be particularly appropriate in the bus industry, which is: (1), dominated by two firms: and (2), increasingly faced with competition from other modes of transportation. The entry policy we recommend would create strong pressure from potential market entrants for existing carriers to become more competitive and innovative in their price and service offerings.

H.R. 3663 would allow the Commission to grant temporary or emergency temporary authority to a bus line seeking to serve a community having no other motor carrier capable of meeting its immediate needs. In addition, the bill provides that the Commission may, when there is no other service to a community, extend an ETA for up to 180 days so that a carrier may experiment in new markets.

We suggest the section be amended to permit any fit carrier to receive temporary authority if, due to emergency or limited term conditions, there is not sufficient time to process an application for permanent authority.

Our proposal is consistent with H.R. 3663, yet goes further. It would allow us to continue to issue authority in emergency situations and at the same time would eliminate a step in the three step—ETA, TA and permanent authority—application process, thus permitting the Commission and the carriers to realize a substantial savings in funds and resources. Finally, this change would facilitate development by the Commission of procedures which would permit carriers to file one application for both temporary and permanent authority.

We favor a zone of rate flexibility similar to the zone in H.R. 3663. While we would be reluctant to allow a broader zone of upward rate freedom until more competition exists in the industry, that zone could be automatically broadened at the end of 3 years.

In terms of downward flexibility, bus companies need as much freedom as possible to compete with Amtrak, private automobiles, and the relatively unregulated airline industry. Greater rate flexibility should lead to greater use of peak-load pricing and discount fares. For these reasons, we would urge Congress to permit the Commission to enlarge the downward limit of the zone. In fact, if the bill provides for freer entry and elimination of antitrust immunity, as suggested by the Commission, it may be that rate regulation will no longer be needed after a period of time.

In general, we believe that the justification for changes in the rate bureau system applicable to motor carriers of property applies to motor carriers of passengers as well. However, the reasons for the substantial delay in implementation of the provisions of section 14 of the Motor Carrier Act do not appear to apply to passenger carriers.

The relative simplicity of the situation and the dominance of one or two carriers in the industry together provide a substantial justification for prohibiting discussion and voting on single-line rates immediately. Moreover, it does not appear that any further study is necessary in the area of bus regulation. The problem is simpler, the answer is clearer, and the need for more rapid action is evident.

The Commission believes that continued immunity for establishing joint line rates is also unnecessary. However, we do not object to the phasing out of this antitrust immunity over a period of several years in order to allow carriers to establish and adjust to new methods of adjusting joint line rates.

In addition, there is no demonstrated need for collective determination of nationwide general increases or decreases, as would be permitted by H.R. 3663. Collective procedures to request rate increases based on industry average carrier costs may seriously understate or overstate actual carrier costs.

Accordingly, we suggest that antitrust immunity with respect to single line rates be discontinued January 1, 1983. On January 1, 1984, such immunity for discussion and voting on general rate increases or decreases and broad tariff changes should be eliminated. Finally, we would recommend termination of immunity for discussion or voting on joint line rates on January 1, 1985.

ICC restrictions on exit from the industry have had a minimal effect in the past. The restraint on exit comes from individual State regulatory authorities. Thus, Federal reform proposals for exit have to deal with the potential problems that could result from divergent Federal and State policies.

The exit provisions of H.R. 3663 set up a procedure that would allow carriers to exit from unprofitable routes, or substantially reduce the service level, on the intrastate portion of a route for which they have both interstate and intrastate authority. Once the criteria in the bill are met, the Commission is required to grant the discontinuance or reduction in service unless a protestant can show that such action would not be consistent with the public interest or that continuance of service would not constitute an unreasonable burden on interstate or foreign commerce.

These procedures give passengers and communities notice of the discontinuance and allow an opportunity for protest. At the same time, carriers will have greater assurance concerning exit and compensation for serving unprofitable routes.

With flexible entry, rates and exit, it is likely that new carriers will be willing to provide service in instances where service has been discontinued. Failure to liberalize regulation of exit could effectively preclude new companies from entering the field. Thus, we consider the exit provisions central to this legislation.

While we strongly favor adoption of exit provisions similar to those in H.R. 3663, several additional suggestions on time frames and the test for exit are set forth in our testimony.

On the Federal-State relationships, in our view the legislation strikes an appropriate balance in this area. We believe the mechanisms in the bill and cooperative Federal-State study should ultimately result in greater uniformity and less need for use of the preemptive provisions.

Before concluding, I would like to comment briefly on several other provisions of the bill.

Certain provisions of H.R. 3663 would give the Commission the discretion to deny applications of Mexican and Canadian motor carriers if the Commission determines that Mexico or Canada, or pertinent governmental subdivisions of those countries, discriminate against U.S. carriers. The Commission would also be prohibited from issuing a license to a foreign carrier whose government does not grant authority to U.S. carriers.

This issue is of great concern to the Commission. We have recently instituted an investigation of the situation, and we have reopened certain pending cases to obtain additional evidence. While we do not object to the approach in H.R. 3663, it may be that we will have a separate recommendation at the conclusion of our investigation.

With respect to securities regulation, we advocate transfer to the Securities and Exchange Commission of jurisdiction over the issuance of securities, not only for motor carriers of passengers as proposed in H.R. 3663, but for all motor carriers.

I would also like to mention that on December 29, 1981, we submitted to Congress a proposal to eliminate publication of Federal Register notices of motor carrier applications and to substitute an in-house publication of those notices which would be available on a subscription basis. If this proposal could be included in the bus bill, it would result in substantial savings for the Commission.

Finally, I would reiterate our support for prompt enactment of bus legislation. The House bill, with changes such as those we have outlined today, will provide the intercity bus industry with essential reforms.

This concludes my prepared remarks. At this time, I will try to answer any questions that you might have.

Senator DANFORTH. Let me just ask you the most basic of all questions, Mr. Taylor. I have now been in the Senate for 5 years, and I have spent a lot of time traveling around my State talking to constituents. I cannot remember anybody ever asking me a question about intercity bus transportation. Maybe I will have to check my mail, but I do not think I get any complaints about it. Why are we doing anything at all?

Mr. TAYLOR. Well, I suppose the biggest reason is that everybody else has had a chance to sup at the deregulatory banquet. The bus industry feels they have some very serious problems in areas such as rate flexibility and in exit. In these areas there is a confusion with the State authorities.

I think——

Senator DANFORTH. Let us suppose, just hypothetically, that a Senator is less interested in who sups at what table than what is in the best interests of his constituents, his people. What is wrong with the present system?

Mr. TAYLOR. I think you will have a better bus industry if we adopt this bill.

Senator DANFORTH. How about the people? Let's take the people of Rolla, Mo., how are they going to be better off with this legislation than they are now?

Mr. TAYLOR. I listened to some of the questions earlier, particularly Senator Pressler's, and as Senator Cannon knows, I am from the State of Nevada and we are very, very concerned about bus service to small communities.

We have a number of them in the State of Nevada. 80 percent of our people live in two urban areas and the rest of them are sprinkled around in small communities. It is absolutely true that people who ride buses are generally the old and the sick and the poor and the young, people who really do not have any other form of transportation.

Many of those——

Senator DANFORTH. Are we going to hurt those people?

Mr. TAYLOR. I do not think we will. I think you will encourage more service. I do not think there is going to be any problem on bus service to Rolla, anymore than there is to Ely, Nev.

We had a company by the name of Nevada Central that provided service to Ely for some period of time, and they eventually went out of business. There was a great hue and cry about how Ely, Nev. was going to be served. Their service was in jeopardy, and eventually a fellow came along that used to work for a former client of mine, LTR Stage Line, Inc., and he put together an operation and he is now providing service to Ely, Nev.

He is doing it in vans; he is not doing it in 45-passenger, $138,000 equipment, but Ely, Nev. is being served, and I think that sort of thing will happen.

Senator DANFORTH. You are talking about a small community which is currently served by interstate buses. As I understand it, with the proposed legislation, with varying degrees as to how far we go, it would be much easier after any bill is passed to just bypass the small community in the middle and provide service for the larger, more lucrative communities on either end.

Mr. TAYLOR. I do not believe that is so, Senator. To start off with, any service that is purely intrastate——

Senator DANFORTH. I am talking about interstate. Let us take a bus that goes from Tulsa to Ft. Leonard Wood, to Rolla, to St. Louis, to Chicago. Now, that would be covered by the bill, correct?

Mr. TAYLOR. That is right.

Senator DANFORTH. Let us suppose that it is very lucrative from Tulsa to Ft. Leonard Wood to St. Louis to Chicago, but at the Rolla stop there are very few people who get on and off. The service is, however, very important to those few people.

Now, under the bill would it not be likely that that Rolla stop would be eventually abandoned?

Mr. TAYLOR. I do not think so, because I think the community of Rolla, if they wanted to, could come in and show that that is not an undue burden on interstate commerce. Exit is not automatic. When you get into this preemption area, you have to meet the tests that are in the bill. If they wanted to, the community could appeal or the Missouri Public Service Commission could appeal, and they could lay out all of those significant matters for us.

So, it is not just that we do not want to serve Rolla anymore, so apply to the ICC and service ends. It will not work that way under the statute.

Senator DANFORTH. Well, that is not my understanding. My understanding is that it would be easier under the bill, to abandon that intermediate stop. It would also be easier for a competitor to come in and provide faster service. Everybody would want to take the fastest bus from Ft. Leonard Wood to St. Louis, so they would not take the one that had the intermediate stop.

Mr. TAYLOR. Well, the difference is that today, the Missouri Public Service Commission, to the extent that that service is performed within the State of Missouri, would have some kind of handle on it, and with the preemption authority in the bill, the ICC could make the ultimate determination.

Senator DANFORTH. Why is that good?

Mr. TAYLOR. The point about it is that it is not just an automatic thing, it is not just a matter of the bus company coming in and saying to the ICC, we no longer want to serve Rolla. It does not work that way.

They have to come in and satisfy the standards of the legislation, and there is an opportunity for the communities to come forward and show that this is not an undue burden on interstate commerce, and that there is a public interest use consideration involved, and that therefore, the service should be continued.

Of course, the Commission would take all of those things into account.

Senator **Danforth**. Senator Pressler?

Senator **Pressler**. Thank you, Mr. Chairman. Basically, you are talking more about Greyhound and Trailways, but I would like your assessment of what you think bus deregulation will do to the small carriers.

Mr. **Taylor**. Well, for years, Senator, I represented a small carrier, Las Vegas and Reno Stage Line, Inc. I do not know how they feel about the specific piece of legislation, but I have to say that I believe small carriers will benefit from this legislation, and I think that there is a record for supporting it.

I do not believe this is just a Greyhound-Trailways proposal. The entire bus association, as I am sure you are going to hear later in the day, is of one mind on this thing and they are here to support the legislation.

I think it will be beneficial to small companies as well as big companies, and I think it will also benefit some new companies. Perhaps we will get some new companies in the business that we have not had before, and we will have some additional competition for Greyhound and for Trailways, and I think that is a good thing.

Senator **Pressler**. I also was pleased with Senator Danforth's statement. No one has ever talked to me about bus service. And when I was first in Congress in 1974, in those first years, no one ever talked to me about airline service. But since we have had airline deregulation, everybody talks to me about it. So I hope this same pattern does not follow with buses.

Now, Mr. Taylor, last fall in a speech to the American Bus Association, you stated that a priority concern for the Commission would be, "the continuation of scheduled regular service to small or rural communities." Now, I want to talk about small carriers. I am not talking about Greyhound and Trailways.

How do you think H.R. 3663 addresses this concern, and what steps will the Commission take to insure rural bus service?

Mr. **Taylor**. Well, I got into some of that discussion with Senator Danforth earlier. And I think your concern is in the area of exit and the fact that up until now, the States have done a fairly good job in not allowing firms to exit even if there are only two or three people on the bus and it is not operating profitably.

I do not really think that is a very healthy situation, and yet I have the same concern that you do, Senator, for a small community because I come from a State where we have a lot of them.

But service is very important, particularly to people who have no other mode of transportation available. An example in my State would be an Indian, for example, who wants to get up to the medical center. If he does not ride an LTR bus, he probably does not go. So I have a great concern about that kind of service as well and I think it is terribly important that we retain it.

But I think you have in this legislation a very fine balance and that we will see that service to small communities is not disrupted. As the Secretary pointed to the Florida experience under deregulation, I would do the same. I do not think they have had problems with it, and I do not think that we need anticipate any problems under this legislation.

As I explained to Senator Danforth, if you have a small community that feels it is going to be disadvantaged by the elimination of service, that small community has the right to make a presentation to the Commission to say that it is not an undue burden on interstate commerce, that the service is needed and necessary, and obviously, I think we are going to take those things into account.

Now, I cannot offer you any guarantees. I know your question to the Secretary included that word, and there are not any guarantees. But as far as I can tell—and I have a great concern for retaining important bus service to small communities—I do not think this bill will jeopardize that service.

Senator. **Pressler**. Thank you, Mr. Chairman.

Senator **Danforth**. Senator Cannon?

Senator **Cannon**. Do you have any reform initiatives that you plan to undertake in the absence of legislation or without waiting for this legislation?

Mr. **Taylor**. Reform generally, or just insofar as the bus industry is concerned?

Senator **Cannon**. Yes, to go along the lines of what we are talking about here in the event that Congress does not act. What do you plan in that area?

Mr. **Taylor**. Well, generally, Senator, we have been involved in a very heavy regulatory reform program at the Commission. We began that last July. It is not just aimed at the bus industry as such, but to all areas where the Commission has adopted rules or regulations. After carefully reviewing these rules and regulations, the Commission has determined that some are either no longer necessary or are unduly burdensome.

We have targeted over 150; 76 are intended for the funeral pyre relatively soon, with at least 40 of them to be acted upon by September. They are not just bus industry matters, however. They apply to the entire spectrum of the ICC's regulatory jurisdiction.

Senator **Cannon**. What has been your experience with respect to complaints about loss of service in rural areas caused by trucking deregulation?

Mr. **Taylor**. We really so far have not had a problem with that. Now, there is a three-phase study that is going on, which I believe should be completed in September 1982.

The first phase indicated that there really had not been a problem insofar as trucking service to small communities was concerned. However, this phase was conducted only over a 6-month period immediately following passage of the Motor Carrier Act. We should have a better picture when all three phases are complete. We also have the Florida experience. I plan to go and talk to the Florida Public Service Commission to see firsthand what has happened. But at this time we see no indications of problems there.

And I do not think we really have problems elsewhere. And I would expect that that kind of result, insofar as trucking service to small communities is concerned, gives us some indication that we are not going to have a serious problem with respect to small community service if this bill is passed.

Senator CANNON. Have you had any complaints from the State of Nevada from the small communities?

Mr. TAYLOR. I really have not, and I think I can assure you I would have heard loud and clear from Tonopah and Battle Mountain, if there had been any kind of a serious problem. And the fact of the matter is I have not. I do not know whether you have or not, but I have not myself.

Senator CANNON. Would you expect the problem to be larger or smaller with respect to the bus situation if we adopted this legislation?

Mr. TAYLOR. I think you might have to pay a little more attention to it. It is easier to make some kind of a substitute arrangement to get a truck—in that you can buy your own or you can find someone who can do something. But if the bus stops coming through town, it is a little difficult to go out and get another one. So it might be a little more serious problem to face.

But, as I indicated when Ely lost the Nevada Central service, along came another fellow who was willing to provide service—not in 47-passenger equipment but in vans—and Ely is being served as a result of that. And I think that sort of thing will continue.

One of the arguments for making the entry policy more relaxed is that you will have an easier opportunity to get people in.

Senator CANNON. We will hear testimony later from a consumer representation who will tell us that between 1935 and 1973, the ICC investigated only three proposed general rate increases, and of those, approved two in total and trimmed 2 percent off the third one.

Now, they argue that that is the only occasion during the past 38 years that the ICC has held down a general rate increase. Is that correct?

Mr. TAYLOR. Senator, I could not possibly answer that. I just do not know, but we will look and make a check for the record, and if we could submit that information later on, I would be happy to do so.

[The following information was subsequently received for the record:]

You referred to testimony from a consumer representative who indicated that between 1935 and 1973, the ICC investigated only three proposed general rate increases, ultimately approving two of the three proposals.

I offered to attempt to determine whether the statement was correct. Unfortunately, without retrieving our files from the National Archives Building in Suitland, Maryland, the information is not available. However, I do agree that the Commission, in the early years of regulation, did not generally suspend or investigate bus proposals. This may have been due in large part to the lack of protests.

However, in recent years, the Commission has been more active in this area. A check of our records for the last ten years indicates that the Commission investigated at least seven general increases. A description of these seven cases—including the docket numbers, the initial percentage increase requested, and the actual increase allowed—follows:

1. I&S 26858; Filed for 5 percent increase to be effective 5/1/73; 3 percent became effective 8/13/73; 5 percent became effective 6/6/74; This 5 percent was reconsidered and, effective 12/26/74, only 3 percent was allowed.
2. I&S 27845; Filed for 4 percent increase to be effective 7/5/74; 2 percent became effective 8/1/74.
3. I&S 29089; Filed for 5 percent increase rounded to next higher 0 or 5 cents to be effective 6/28/76; 5 percent rounded to next lower 0 or 5 cents became effective 7/2/76

4. I&S 29270; Filed for 9.5 percent increase to be effective 11/22/76; 4 percent became effective 11/22/76.

5. I&S 29412; Filed for 6 percent increase to be effective 3/25/77; and to be replaced by a 13 percent increase on 5/13/77; 6 percent became effective 3/27/77; which was replaced by 11 percent on 5/16/77.

6. I&S 29718; Filed for a 10 percent increase to be effective 1/6/78; 5 percent became effective 1/13/78.

7. I&S 30330; Filed for a 5 percent increase to be effective 7/2/81; 3.8 percent became effective 7/8/81.

Mr. TAYLOR. I would like to point out, however, that since I have been aboard there was a 5-percent increase requested to be effective on July 2, 1981. The Commission voted to suspend without prejudice to refiling and a 3.8-percent request because effective July 7, 1981. So at least since I have been aboard, I can report to you that we have had one case which was suspended without prejudice to refiling for a lower amount, which apparently was done.

So, what went on between 1935 and 1973, without making a rather thorough investigation which we will be glad to do for the record, I am sorry I could not answer.

Senator CANNON. To what extent does the ICC now regulate exit from interstate service?

Mr. TAYLOR. We really do not do much about it. The exit problems are largely——

Senator CANNON. So the problem that Senator Pressler is talking about should be no more of a problem under this legislation that it is, right, under current law?

Mr. TAYLOR. Absolutely correct. Absolutely correct.

Senator CANNON. And if you do not regulate exit carefully, how do you force carriers to cross-subsidize those unprofitable routes that Senator Pressler is worried about? Is there anything, any action you can take to enforce that?

Mr. TAYLOR. No, but I know that cross-subsidization goes on. I can assure you that there is service that my former client, LTR, used to provide in rural areas in Nevada where they did not even cover the driver's wages from their revenue. And if it were not for other service they are providing, charter and special operations around Reno and Las Vegas, they could not possibly afford to to do it. So there is a very strong element of cross-subsidization involved.

Senator CANNON. In other words, they lose money on the run but they make it up on the volume?

Mr. TAYLOR. That is it.

Senator CANNON. Thank you, Mr. Chairman.

Senator DANFORTH. Senator Long?

Senator LONG. No questions, Mr. Chairman.

Senator DANFORTH. Thank you very much, Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman. It was a pleasure to be here.

[The statement follows:]

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and members of the subcommittee, I want to thank you for the opportunity to appear here today to present the views of the Interstate Commerce Commission with regard to regulatory reform of the intercity motor bus industry. My remarks, as requested, will focus on deregulation of the intercity bus industry and H.R. 3663, the "Bus Regulatory Reform Act of 1981."

In the "Motor Carrier Act of 1980," the Congress set out a balanced approach to the regulatory reform of the trucking industry. This was followed by the "Staggers

Rail Act of 1980," enacted to reform the economic regulation of railroads, and the "Household Goods Transportation Act of 1980," the purpose of which was to reduce regulation of and increase competition in the household goods moving industry. The intercity bus industry was specifically excluded from most of the provisions of the Motor Carrier Act in order that it might be given special attention and analysis at a later time.

This process has now begun, and H.R. 3663 is a good start in reforming regulation of the bus industry and in providing a greatly needed impetus towards more competition in this industry. We believe the bill offers a balanced approach—one that is essential to regulatory reform—by easing entry into new routes by new or existing carriers, establishing a more certain procedure for exit from unprofitable service, and providing bus companies with greater flexibility to price their services, taking into accout factors such as competition, cost increases, and market demand for price/quality of service options.

We think this approach is the most practical and efficient means available to maintain adequate service, both for the public generally and for the poor, the elderly, the military, and students, who utilize bus service in the greatest numbers.

Further, H.R. 3663 would eliminate route restrictions, resulting in greater flexibility, more efficient load factors, and more efficient use of fuel. Antitrust immunity would be limited and, after the effective date of the Act, only those carriers that can practicably participate in a movement could vote on a proposal.

While H.R. 3663 represents a considerable improvement over present law, the Commission believes changes should be made to insure that the bill achieves its stated policy of promoting competitive and efficient transportation service.[1] In evaluating this legislation, the Commission has carefully considered four basic issues.

First, would the bill remove regulatory barriers to entry which are not directly associated with protecting the public from unfit firms, and would it remove barriers to exit from uneconomical service to encourage entry and lessen concerns about getting locked in if an entry experiment fails?

Second, would the legislation remove regulatory barriers which prevent motor carriers from developing the most efficient, flexible, and market responsive operations possible?

Third, would it allow sufficient pricing flexibility to encourage the prompt adjustment of rate levels to meet market conditions, while at the same time limiting antitrust immunity so that pricing freedom can not be abused at the expense of the traveling and shipping public?

Fourth, does it clarify the Federal-State relationship?

Today, I will focus on the issues we believe are at the crux of reform for this industry—eased entry, eased exit, institution of flexible pricing in conjunction with the elimination of antitrust immunity, and clarification of the Federal-State relationship.

ENTRY

With respect to common carriage, H.R. 3663 would require the Commission to issue a certificate to a fit, willing, and able applicant, unless the Commission finds, on the basis of evidence presented by any person protesting the application, that a grant of authority is not consistent with the public interest. Thus, H.R. 3663 eliminates the need for a demonstration of public support for the proposed service and shifts the burden to protestants to show that a grant would not be consistent with the public interest.

The bill maintains the present standard[2] requiring that a carrier be fit, willing, and able (1) to provide the transportation to be authorized by the certificate; and (2) to comply with 49 U.S.C. subtitle IV and Commission regulations. The bill defines fitness to include "financial, operational, and safety fitness." Report language emphasizes that the fitness test is intended to weed out unfit applicants, not to place additional barriers to entry or to substitute the regulatory process and bureaucratic judgment for normal business judgments. While report language is important, we would like to take this opportunity to stress the fact that the inclusion of language to this effect in the body of the bill would be a much better way of insuring that this most critical point not be lost or blurred when the Commission seeks to implement this piece of legislation.

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[1] H.R. Rep. No. 334, 97th Cong., 1st Sess. 28 (1981).

[2] Commissioner Gresham believes that section 6(c)(7) of H.R. 3663 would require an applicant to meet a more stringent fitness test than is currently required by the Commission. If the fitness test should be enacted as presently drafted, he believes that absolute statutory constraints on the Commission's ability to deny passenger bus operating authority must be imposed. Absent such constraints, he believes we could see a reversion to more regulation, more government intrusion into private business judgment, and less competition. His position is explained in more detail in his separate expression to the Commission's February 10, 1982, legislative proposal, and is already before the Subcommittee.

The "public interest" standard and the fitness provision apply to applications for common carrier authority, including regular-route scheduled service and charter and special operations. However, for contract carriers and brokers of passengers, the bill adopts a fitness only test.

We commend the House for eliminating the present burdensome public convenience and necessity test and the need for public support of an application; we strongly believe this change will simplify and expedite entry. However, we see no necessity to have different tests for common and contract carriers. Accordingly, we urge the Senate to adopt a "fitness only" standard for all motor carriers of passengers, a standard along the lines of our legislative proposal approved for submission to Congress and sent forward on February 10, 1982. As you are no doubt aware, the Commission's legislative proposal relaxes entry standards not only for motor carriers and brokers of passengers but also for motor carriers generally as well as for water carriers and freight forwarders. We believe that a "fitness only" standard would be particularly appropriate in the case of the bus industry which is (1) dominated by two firms,[3] and (2) increasingly faced with competition from other modes of transportation which are either totally or largely deregulated or subsidized.

We also believe that consideration should be given to limiting the "fitness only" standard to issues of safety and evidence of sufficient insurance. In the alternative, additional statutory language might be appropriate to ensure that the financial and operational fitness tests will not be applied as an undue barrier to entry.

A less burdensome fitness only entry test for bus firms would further assure competitive and efficient rates and services. Relaxing regulatory constraints will allow bus companies to maximize the opportunities afforded by their high fuel efficiency and low costs. In addition, the entry policy we recommend would create strong pressure from potential market entrants for existing carriers to become more competitive. Indeed, failure to price competitively or meet customer service demands could result in a loss of a market to another carrier or mode of transportation.

In conjunction with our fitness only proposal for permanent authority, we recommend adoption of a similiar standard for temporary authority. The House bill, H.R. 3663, would allow the Commission to grant temporary or emergency temporary authority (ETA) to a motor carrier of passengers seeking to serve a community having no other motor carrier capable of meeting its immediate needs. In the case of emergency temporary authority, the bill provides that the Commission may, when there is no other service to the concerned community, extend the ETA for up to 180 days in contrast to the 90-day period for which motor carrier ETA extensions are authorized. The stated purpose of this longer time frame is to enable carriers to expeirment in new markets without incurring an obligation to continue service if experience proves that the long term prospects are not favorable.

The Commission recommends additional changes in section 10928 of title 49, United States Code, Temporary Authority for Motor and Water Carriers. We suggest the section be amended to permit any fit, willing, and able carrier to receive temporary authority if, due to emergency or limited term conditions, there is not sufficient time to process an application for permanent authority.

We do not believe our proposal with respect to temporary authority is in any way inconsistent with the House's intent to allow for experimentation. Rather, or proposal goes further. It would allow us to continue to issue authority in emergency situations and at the same time eliminate a step in the three step (ETA, TA, and permanent authority) application process. In addition, our proposal would permit the Commission and carriers to realize a substantial savings in the funds and resources used in filing and processing applications. Finally, this change would facilitate development by the Commission, through rulemaking, of percedures which would permit carriers, at their option, to file one application for both temporary and permanent authority.

RATES

H.R. 3663 extends the zone of rate freedom established by Section 11 of the Motor Carrier act to motor carrier of passengers, but the extent and the applicability of the zone differ slightly from the Motor Carrier Act. The arguments in support of rate flexibility for motor carriers of property and freight forwarders are, we believe, generally applicable to motor carriers of passengers as well. Allowing price flexibility in the bus industry, in conjuction with entry and exit flexibility, provides a balanced plan for regulatory reform.

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[3] Based on 1980 data, Greyhound generated approximately 59% of the industry's Class I intercity operating revenues and 42.3% of total intercity bus revenues. Trailways' 1980 revenues approximated 21.8% of Class I intercity operating revenues and 15.6% of total intercity bus industry revenues.

We favor a zone of flexibility similar to the zone in H.R. 3663. However, we would be reluctant to allow broadening the zone to permit a greater margin of upward rate freedom until such time as more competition exists in the industry—competition which, it is hoped, the House bill, with amendments adopted as a result of this hearing, will provide for in time. Therefore, we support the provision that the upward limit of the zone may not be allowed to exceed 10 percent in any year unless the Commission finds that (1) there is enough actual and potential competition to regulate rates and that there ae benefits to the public from further rate flexibility; or (2) the increase is necessary to meet the costs of inflation. We further suggest a broadening of the zone of rate flexibility at the end of three years.

In terms of downward rate flexibility, bus companies need as much freedom as possible if they are to compete with a subsidized rail carrier and the relatively unregulated automobiles, airlines and trucking companies that are their competitors. Greater rate flexibility should lead to far greater use of peak-load pricing and discount fares. For these reasons, we would urge Congress to permit the Commission, in its discretion, to enlarge the downward limit of the zone.

To ensure that States have no incentive to offset the benefits of pricing flexibility and the zone of rate freedom by denying intrastate rate increases, H.R. 3663 provides for the Federal preemption of state rate actions, upon application of a carrier, if the rate, rule, or practice causes unjust discrimination or imposes an unreasonable burden on interstate commerce.

RATE BUREAUS

H.R. 3663 (1) establishes new guidelines for the industry's one rate bureau; (2) eliminates antitrust immunity for discussion and voting on single line rates after January 1, 1984; (3) limits the scope of antitrust immunity with respect to joint-line rates after January 1, 1984 to those carriers who can practicably participate in the interline movement; and (4) provides for the addition of three members to the Motor Carrier Ratemaking Study Commission to investigate and report on the need or lack of need for the continuation of any antitrust immunity.

In general, we believe that the justification for changes in the rate bureau system applicable to motor carriers of property applies to motor carriers of passengers as well. However, the reasons for the substantial delay in implementation of the provisions of section 14 of the Motor Carrier Act and for the continuation of antitrust immunity for collectively making joint-line and general rate decisions do not appear to apply to passenger carriers. This is so for several reasons. First, it is clear there is a more immediate need to foster and enhance competition in the bus industry. The bus industry has one rate bureau which is considerably influenced by Greyhound and Trailways, and the market is, as a whole, dominated by those two carriers. We do not believe there is any public purpose served by allowing Greyhound and Trailways to decide mutually on rates they charge between points where they compete with each other on single-line traffic. Moreover, the uncertainties caused by the multiplicity of rate bureaus and the vast numbers of carriers, which are potential problems in the trucking area, are simply not present in the bus industry.

On balance, the relative simplicity of the situation and the dominance of one or two carriers in the industry together provide a substantial justification for prohibiting discussion and voting on single-line rates as soon as possible. Nor does it appear that the study mandated by the Motor Carrier Act is necessary in the area of bus regulation—the problem is simpler, the answer is clearer, and the need for more rapid action is evident.

The Commission believes that continued immunity for establishing joint-line rates is also unnecessary. However, we do not object to the phasing out of this antitrust immunity over a period of several years in order to allow carriers to establish and adjust to new methods of adjusting joint-line rates.

In addition, there is no demonstrated need for collective determination of nationwide general increases or decreases, as would be permitted by H.R. 3663. Inflation affects different carriers in different regions in different ways. Collective procedures to request rate increases based on industry average carrier costs may seriously understate or overstate actual carrier costs. Moreover, the rule of ratemaking proposed in H.R. 3663 would require the Commission to establish regulatory policies which authorize rate levels for passenger carriers that are adequate to allow well-managed carriers to cover their costs and earn a fair return. This would further diminish the need for collective consideration of general rate actions.

Accordingly, we suggest that antitrust immunity with respect to single-line rates be discontinued after January 1, 1983. After January 1, 1984, such immunity for discussion and voting on general rate increases or decreases and broad tariff changes should be eliminated. Finally, we would recommend termination of immunity for discussion or voting on joint-line rates after January 1, 1985.[4]

EXIT

A balanced regulatory reform proposal must consider the interaction of entry, rates, and exit regulation. The economic check on greater price flexibility is eased entry regulation. However, exit regulation is also an extremely important element of current restrictions of intercity bus regulation and should be a key element in any regulatory reform proposal.

ICC restrictions on exit from the industry have had a minimal effect in the past. As detailed in the report on H.R. 3663,[5] the restraint on exit comes from individual state regulatory authorities. Federal reform proposals for exit have to deal with the potential problems that could result from divergent Federal and State policies. For example, a bus carrier that seeks to abandon an unprofitable interstate route may still be forced to serve the similarly unprofitable intrastate portion of the route if the state denies the carrier the abandonment of the route. Faced with this situation, a carrier might be forced to maintain the interstate route to minimize overall losses, even though this will place a burden on the carrier's interstate service as a whole.

The exit provisions of H.R. 3663 set up a procedure that would allow interstate carriers to exit from unprofitable routes, or substantially reduce the service level, on the intrastate portion of a route for which they have both interstate and intrastate authority. Criteria are set forth under which the Commission must consider granting relief. Once the criteria are met, the Commission is required to grant the discontinuance or reduction in service unless a protestant can show that such action would not be consistent with public interest or that continuance of service would not constitute an unreasonable burden on interstate or foreign commerce. The proposed procedures give regulatory authorities and affected communities notice of the proposed service discontinuance and an opportunity to protest. At the same time, the exit provisions provide a mechanism to remedy situations where State actions are creating an unreasonable burden on interstate commerce. Communities have the right to protest a discontinuance; time is allowed for information regarding traffic characteristics and financial assistance levels to flow from the carrier to the ICC, the states, and other interested persons. This procedure provides an opportunity for states and other persons to seek a subsidy for the service or encourage alternative service. Deadlines are established to ensure that there is no undue delay in the ultimate decision.

The value of this procedure is that it gives passengers and communities notice of the discontinuance and gives carriers greater assurance about being able to exit or be compensated for serving unprofitable routes. With flexible entry, rates, and exit, it is likely that new carriers will be willing to provide service over routes in instances where service has been discontinued. Failure to liberalize regulation of exit could effectively preclude new companies from entering the field. Thus, we consider the exit provisions central to this legislaton.

While we strongly favor adoption of exit provisions similar to those in H.R. 3663, we have two additional suggestions. First, the time frames could be shortened. With regard to continuance of service, the 180-day period could be changed to 150 days. Also, we believe the Commission could complete action on petitions in 75 rather than 90 days. And, second, we question the need for inclusion of a "public interest" test. It would appear that the "unreasonable burden," standard, already included in the House exit provision, should suffice.

FEDERAL-STATE RELATIONSHIP

H.R. 3663 would add a new paragraph to section 10101(a) of title 49. This addition to the National Transportation Policy directs the Commission to cooperate with the States whole ensuring that the initiatives of the legislation are not nullified by State regulatory actions. Other sections of the bill provide for Federal preemption of certain state actions.

In our view, the legislation strikes an appropriate balance, providing relief against discrimination and unreasonable burdens on interstate commerce, while recognizing the need for the states to continue to play an important role in decision-making.

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[4] Commissioner Gresham notes that today's suggestions on collective ratemaking reform appear to be inconsistent in some respects with the position expressed in the Commission's December 1980 bus legislative proposal (as to continued joint-line immunity) and with the Commission's decision not to comment in opposition to Section 10 of H.R. 3663 in its November 13, 1981, letter to Congressman Glenn M. Anderson.

[5] H.R. Rep. No. 334, supra, Appendix B.

The bill mandates a Federal/State study to establish standards and procedures for rates, rules and practices applicable to transportation provided by motor common carriers of passengers subject to ICC jurisdiction. We believe the mechanisms in the bill and the cooperative Federal/State study should ultimately result in greater uniformity and less need for use of the preemptive provisions.

ADDITIONAL REMARKS

Before concluding my remarks, I would like to comment briefly on several other important provisions of the bill.

Sections 6 and 13 of H.R. 3663 add new subsections to sections 10922 and 10923 of title 49. The new provisions would give the Commission the discretion to deny applications of Mexican and Canadian motor carriers if the Commission determines that Mexico or Canada, or pertinent governmental subdivisions of those contiguous contries, do not treat U.S. carriers as favorably as persons form such political subdivision or country. The Commission would also be prohibited form issuing a permit or certificate to any person from a political subdivision of a foreign country if such political subdivison or country does not grant authority to U.S. carriers.

This an issue which is of great concern to the Commission. Several weeks ago, on February 11, 1982, the Commission instituted an investigation into Canadian law and policy regarding applications of American motor carriers for Canadian operating authority. The proceeding is set for oral hearing, with a prehearing conference scheduled for March 31, 1982. The proceeding will be handled expeditiously. In fact, we have directed the Administrative Law Judge to close the record no later than 90 days from the date of publication of the notice in the Federal Register. The Commission has also reopened the record in various pending cases to receive additional evidence on the reciprocity issue. We are of course aware of the bills which have been introduced in the House and Senate to address this issue, as well as Senator Cannon's Resolution 317 and also your concerns, Mr. Chairman.

With regard to the specific language in H.R. 3663, we have no objection to the proposed approach. However, we recognize that you may wish to study the reciprocity issue further, and we would like to reserve the right to submit a separate legislative recommendation, if warranted, after we complete our investigation.

Minimum levels of insurance are needed to protect the public from harm. At the same time, it is important that the liability requirements are established at levels which will not act as a barrier to entry. In our judgment, the levels set forth in section 18 are appropriate. It is our understanding, however, that the Department of Transportation would prefer that it be given greater flexibility in establishing minimum levels through rulemaking. We do not oppose a change of that nature.

With respect to securities regulation, we advocate transfer of jurisdiction over the issuance of securities for motor carriers of passengers to the Securities and Exchange Commission, as proposed in H.R. 3663. We further suggest that it would be appropriate to broaden this provision to apply to all motor carriers. Revised statutory language implementing this recommendation is attached as Appendix A.

Section 24, Administrative Assistance, which would permit the Commission to provide assistance to small carriers and local governments in preemption proceedings, is unnecessary. We do not see a problem in this area, since the Commission has and, unless it is legislatively directed otherwise, will continue to provide administrative assistance to all parties to a proceeding.

Section 12, Rates For Special and Charter Transportation, would prohibit the Commission from investigating or suspending a rate applicable to special or charter transportation on issues of reasonableness. While we have no objection to this provision, we would point out that the Commission virtually never suspends or investigates special or charter rate proposals.

Section 6(c)(4)(D), with regard to consideration of cumulative effects on any other motor common carrier of passengers if the Commission were to approve the application and any other pending applications, does not appear necessary and could prolong the administrative process. As a minimum, the language should be revised to indicate that consideration is limited to applications "by the same carrier, or any affiliate of such carrier."

Moreover, we urge deletion of the limitation to "three groups of charter passengers" which is contained in section 8, Mixing of Regular And Charter Passengers. The purpose of allowing carriers to transport charter passengers while providing regular-route service is to enable carriers to fill more seats. Since this section requires that the mixing of charter and regular-route passengers be permitted only when such action does not interfere with the carrier's obligation to provide the regular-route transportation, we see no reason to limit the number of charter groups that may be transported on the vehicle.

Section 26, Bus Terminal Study, requires the Department of Transportation and the Commission to investigate and study several aspects of bus terminals. We agree with the need for a bus terminal study but believe it would be helpful if the study also specifically addressed the issue of passenger safety in bus terminals.

With respect to merger procedures involving bus companies, section 21 of the bill would adopt the procedural reforms instituted for trucking companies by the Motor Carrier Act. In addition, the section specifies that the criteria for motor carrier consolidation, merger and acquisition of control are the criteria that existed for motor carriers prior to the Staggers Act.

We believe that it would be preferable to exempt bus companies and motor carriers generally from Commission jurisdiction with regard to mergers, consolidations and acquisitions of control. This change is suggested because we believe other governmental bodies have sufficient jurisdiction to protect the public interest.

In view of liberalized entry, the number of merger proposals has substantially declined and continued regulation by the Commission of control and acquisition transactions no longer appears necessary. Alternatively, Congress might wish to consider adoption of an exemption along the lines of the Staggers Act, which could be used to exempt those types of transaction.

Finally, I would reiterate our support for prompt enactment of bus legislation. The House bill, with changes such as those we have outlined today, will provide the intercity bus industry with essential reforms.

This concludes my prepared remarks. At this time, I will try to answer any questions that you might have.

Commissioner Clapp, concurring:

While I am in general agreement with this testimony I feel there are several points which should be called to the subcommittee's attention. First, I think there is some merit to the entry provisions of H.R. 3663 because they provide more protection and opportunity for the small passenger carrier seeking to expand or to survive in its markets. Because of the dominance of two companies in the passenger field, the House provisions may result ultimately in more competition than completely open entry. At the same time, I don't believe it advisable to maintain a stricter test for passengers than for property. To that extent, I would urge Congress to consider carefully the effects of a fitness only entry policy on both the passenger and property carriers but to keep in mind the considerable differences in the two areas.

Secondly, I support section 26, Administrative Assistance. That section, which would permit the Commission to assist small operators and communities indicates Congressional concern for protecting smaller parties less able to help themselves. Further, it is a natural corollary and follow-up to section 217 of the Staggers Act, which authorizes assistance to Class III rail carriers and small businesses faced with a proposed surcharge or joint rate cancellation (49 U.S.C. § 10705a(o)). I believe that it is inappropriate for the Commission to oppose this permissive provision.

Lastly, I strongly agree that an exemption provision along the lines of the Staggers Act would enable the Commission to exempt many minor transactions. This provision has worked well in a number of railroad proceedings in which consideration by the Commission was deemed unnecessary and time consuming. But I believe that the other suggested alternative, the general exemption from Commission jurisdiction of all mergers, consolidations, etc., needs more study. It appears to be an unresearched suggestion for such a major change—especially now as more and more major motor carriers are seeking mergers and consolidations in response to the current economic situtation. I would point out, therefore, that while the suggestion deserves consideration, at this time it is totally unsupported by any Commission analysis, and may have anticompetitive results.

[APPENDIX A]

PROPOSAL TO ELIMINATE ICC JURISDICTION OVER ISSUANCE OF SECURITIES BY MOTOR CARRIERS

(a) Amend subchapter I of chapter 113 of title 49, United States Code, by repealing §11302.

(b) Amend section 11911(a) of title 49, United States Code, by striking out "or of a person to which that section is made applicable by section 11302(a) of this title."

(c) Amend the analysis for subchapter I of chapter 113 of title 49, United States Code, by deleting "11302. Issuance of securities and assumption of obligations and liabilities by motor carriers."

MOTOR CARRIER SECURITIES

Commission jurisdiction over issuance of securities and assumption of obligations and liabilities by motor carriers under 49 U.S.C. 11302 has been used in the past to assure that such carriers are able to perform their obligations under subtitle IV of title 49. Imprudent financing, often for non-carrier purposes, has in some instances caused the deterioration of equipment and service and led to higher tariffs or cessation of service.

Changes in regulation in the motor carrier area have eased the ability of other carriers or interested persons to acquire rights to fill the void created if financially troubled carriers go out of business or cannot provide service. Thus, a statutory requirement for analysis by the Commission of a carrier's ability to meet its debt obligations no longer appears necessary. Protection of debt or equity investors in public offerings is of course an area of concern that should continue to be regulated. However, this can be accomplished by transferring jurisdiction to the Securities and Exchange Commission. This will occur automatically upon the elimination of ICC jurisdiction. The cost of issuing securities by large publicly-held corporations was substantially reduced when the SEC authorized such companies to use an abbreviated registration statement, S-16. This form does not require full repetition of previously disclosed information. The new registration form has reduced regulatory lag. For example, an issue under the SEC regulations can be marketed in as little as 48 hours. Because the statute requires that the ICC serve a copy of the application on each state in which the carrier operates, the ICC cannot ordinarily issue a decision for at least 15 days from date of filing, absent waiver from the considered states.

In Ex Parte No. MC-118, *Grant of Motor Carrier Operating Authority To An Applicant Who Intends To Use It Primarily As an Incident To the Carriage Of Its Own Goods And Its Own Nontransportation Business,* the Commission liberalized its policies with respect to granting motor carrier authority to essentially private carriers. This change in policy reflected the ruling in *Toto Purchasing & Supply Co., Inc.,* 128 M.C.C. 873 (1978) which was expected to provide for-hire private carrier service to shippers who do not have adequate service available and to increase the efficiency of private carriers (Toto companies) by reducing their empty backhaul mileage. However, many private carriers were reluctant to file for operating authority if the entire scope of their securities issuances, including that for non-carrier purposes, were subjected to the Commission's jurisdiction. Some Toto companies overcame this problem by establishing separate carrier subsidiaries, but elimination of the securities regulations would encourage more private carriers to enter the field of regulated transportation. The statute presently applies to all motor carriers, including Toto companies, whose securities exceed $5,000,000.

While it is recognized that the cost of administering securities regulation is relatively minimal for the Commission and carriers, termination of ICC regulation of the issuance of motor carrier securities would nonetheless result in some savings, and it would be consistent with our desire and that of Congress to eliminate unnecessary regulation. In view of eased entry for motor carriers, any benefit from securities regulation is more than offset by the additional cost which is eventually passed on to the public.

Senator DANFORTH. The next witness is Mr. James C. Miller, Chairman of the FTC.

STATEMENT OF HON. JAMES C. MILLER III, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. MILLER. Thank you, Mr. Chairman. I am glad to be here today to present the views of the Federal Trade Commission on the issue before you. I apologize for the lateness in the arrival of my testimony. I do have formal testimony and a lengthy appendix to that that was prepared by Dr. Denis Breen and Mr. Peter Metrinko that I would like to submit for the record, if I may.

Also, I would like to submit for your possible use some testimony I gave before the Ratemaking Study Commission a few months ago, as well as a report that was appended to that testimony.

As you know, Senator Danforth, the Federal Trade Commission has, for many years, advocated a more competitive role for surface transportation. The leadership of this committee—you, sir, Senator Cannon and others—have pushed forward very substantial reforms in the surface transportation area, and I think the economy and the country have benefited substantially.

Interestingly, though, while regulation of trucking has been changed, bus regulation has not. The bus industry, unfortunately, is typically viewed as sort of an ignored stepchild of trucking. But I think it is important for us to address the problems in the bus area: The problems not only from the standpoint of the industry itself, but from the standpoint of consumers.

Now, there are several arguments that have been raised to justify intercity bus regulation. By looking at them very closely, I do not think either in theory or in fact they are upheld.

The legislation that has passed the House, H.R. 3663, is a step in the right direction, but I do not believe it goes far enough. For that reason, I and my fellow Commissioners strongly support the kinds of changes in the bill that the Department of Transportation has advocated.

One thing I think we ought to be very careful about is to not lay burdens on smaller firms. And one concern I have about the legislation in the House bill is that it would differentially impact smaller firms versus larger firms. Fitness requirements, for example make it easier for the larger firms to pass muster than for the smaller firms. So I agree with the Department's proposal that entry requirements ought to be limited to safety and insurance.

Let me say that with respect to the DOT provisions, I would strongly urge that they be passed. I think the outcome would be a much more competitive environment. I think, as a result the beneficiaries would include consumers as well as the industry itself.

Finally, let me just say, Mr. Chairman, that here we are arguing about regulation in the bus industry. Like other industries that are regulated, it seems to me the burden of proof really ought to be on those who would have regulation rather than those who propose to deregulate.

And that is all I have, Mr. Chairman. I know you have quite a busy morning, but if you have any questions I will be glad to try to answer them.

Senator DANFORTH. Thank you very much, Mr. Miller. I understand and fully agree with the administration's philosophy of moving toward deregulation. I think that the question some of us have is: How does that philosophy, which is fine, square with the reality of the effect of carrying out that philosophy on people? People who use intercity buses are oftentimes not the most well-off, wealthy people in a society, but they have to travel. What is going to happen to them?

It would seem clear to me that the necessary effect of deregulation would be that some communities would have poorer bus service after the deregulation than they had before it.

Now, Chairman Taylor does not agree with that, I suppose, but it would seem to me to follow as the night follows the day, that two things can happen. One, that those bus companies that are now serving small communities will want to get out of those communities. And the other thing that is going to happen is that if they continue to serve them, then competitors are going to come in, pick off the more lucrative routes and not make those intermediate stops.

Is not that a necessary result from either the House bill or the administration's proposals?

Mr. **Miller**. Senator, I think not. There are two things in this regard. First, let me address the fact that typical—vis a vis those people who ride airlines and even passenger service Amtrak, for example—people who ride buses are typically higher in age and also are poorer. This fact alone makes it very important for us to address the issue very carefully.

But it seems to me having said that, there is even more reason to deregulate, or at least partially deregulate, this industry. The fact of the matter is this: There are often situations where because of the inflexibilities with respect to rates, because of inflexibilities with respect to entering new service, there are consumers who are not well served who would be better served with deregulation.

I am not about to tell you that as a result of deregulation, every single city pair that is now served by a $138,000 bus will continue receiving the same kind of service. The same fact would be true even if we did not have deregulation because there are changes in the economy from time to time.

But I believe overall, the result of this deregulation proposal—especially as amended by the Department of Transportation's recommendations—would be that service generally all across the Nation would improve. There is no free lunch.

First of all, I think that the amount of cross-subsidy is probably substantially overestimated. We found that in the case of the airlines. We found that also in the case of trucking, and I suspect the same is true in the case of bus service. But since there is no free lunch, this means that somebody is carrying that freight.

Second, cross-subsidization is really a hidden tax. Somebody is paying that hidden tax. When they are no longer paying that hidden tax, then at least the service provided to them would increase.

Senator **Danforth**. Senator Cannon?

Senator **Cannon**. You spent a number of years studying the regulation of different industries. Some industries, obviously, need more regulation than others. In your judgment, where does the bus industry fit in terms of the need for regulation in comparison with airlines, trucking, and some of the other industries that you have studied?

Mr. **Miller**. I think, for the reasons expressed by Secretary Lewis this morning, and also expressed by Chairman Taylor, that the bus industry is probably the least likely to need regulation.

If you had a set of priorities the airlines would be the most in need of regulation, the trucking industry next and coming close behind it would be the intercity bus industry. But I think that in fact, the bus industry and the trucking industry are so close it is hard to make a distinction between them.

Economics of scale are just hardly existent in the bus industry and in the trucking industry except for specialized services, and there is just hardly any rationale for regulating them as a natural monopoly.

Senator **Cannon**. The House report in their bill says that the entry would be significantly eased, but you disagree with that. Why do you disagree?

Mr. **Miller**. Well, I think entry should be made easier. The House bill will make it a bit easier, and I think the amendments that the Department of Transportation proposed would make it even easier.

But on the question of entry, I think the problem there is that we do not want to skew the cost of entry to favor the large firms over the smaller firms. And back to Senator Danforth's point, I think a high entry costs will eliminate lot of smaller carriers—young, minority entrepreneurs in many cases—that will move in to serve those markets where the larger carriers may exit. Excessive costs could eliminate entry into a lot of cities where no service is being provided today.

Senator CANNON. Well, that being the case, why do you come to the view that H.R. 3663 would be more burdensome on small carriers than on larger carriers?

Mr. MILLER. Well, sir, what it does is to remove the need for a witness for public interest tests. But it has a very substantial fitness requirement, the fitness requirement being one that could be easily met by an incumbent carrier or a large carrier, but not so easily met by a new entrepreneur. And I think it is those new entrepreneurs that we want to make sure have an opportunity to get into this market.

Senator CANNON. You are saying it would be more difficult for them to get in, then, under H.R. 3663 than it is now?

Mr. MILLER. That is my reading, of the bill and my concern, sir.

Senator CANNON. Thank you, Mr. Chairman.

Senator Danforth. Senator Long?

Senator LONG. No questions.

Senator DANFORTH. Thank you very much, Mr. Miller.

Mr. MILLER. Thank you, sir.

[The statement follows:]

STATEMENT OF HON. JAMES C. MILLER III, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. Chairman and Members of the Subcommittee: I welcome this opportunity to present the views of the Federal Trade Commission on the Bus Regulatory Reform Act.[1]

For several years the FTC has urged the Interstate Commerce Commission (ICC) and the Congress to adopt a more competitive approach to surface transport regulation.[2] The Commission's most recent formal statement in that regard was contained in testimony which I gave last November before the Motor Carrier Ratemaking Study Commission concerning collective ratemaking in the trucking industry. Just last Thursday the Commission released a study of the effects of the Motor Carrier Act of 1980 prepared by one of our senior economists, Dr. Denis Breen. Since much of the material contained in the Study Commission testimony and the Breen report is applicable to issues under consideration today, I am providing both, with your permission, for the record.

In addition, as you may know, based on independent research, I have personally advocated a more competitive policy toward motor carrier regulation, having so testified on several occasions before Congress.[3]

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[1] Since there is no separate Senate bill, our comments are directed to the House-approved bill, H.R. 3663, as well as to the modifications to that bill proposed by the Department of Transportation.

[2] For example, in 1979 the FTC petitioned the ICC to begin a rulemaking to consider adoption of a zone of reasonableness for motor carrier rates; the ICC began such a rulemaking in 1980, in Ex parte No. MC-137. In 1980, the FTC participated in Ex Parte No. MC-133, an ICC rulemaking instituted to ease regulatory barriers to entry in the bus industry. The FTC is also familiar with the collective ratemaking issue as it specifically pertains to the bus industry, having submitted comments before the ICC in Ex Parte No. 297 (Sub-No. 4), a 1978 proceeding that considered whether antitrust immunity should be continued for rate bureau agreements.

[3] For example, in 1978 I testified in favor of trucking deregulation before the Senate Subcommittee on Antitrust and Monopoly, and in 1980 I testified before the Senate Commerce Commit-

Continued

Mr. Chairman, you and your fellow Subcommittee Members are to be congratulated for the efforts you have undertaken in this area. The intercity bus industry has often been the forgotten stepchild of the transportation industry, virtually ignored by economists, lawmakers, and administrators. Partly as a result, the present regulatory scheme is so outmoded that it is detrimental to the riding public and the bus industry itself.

The Commission believes that immediate and substantial deregulation of the industry would benefit both the traveling public and the long-term health of the bus industry. For that reason the FTC supports passage of the Bus Regulatory Reform Act and endorses the strengthening amendments proposed by the Department of Transportation (DOT). I have also attached our staff's analysis of the House's bill to this testimony. This analysis discusses in greater detail certain inadequacies in the House bill and alternatives to its approach. This analysis was undertaken without knowledge of the DOT effort, though our staff's analysis closely parallels DOT's.

Before addressing the panoply of issues raised by the bill, let me briefly summarize our conclusions. Federal regulation has protected inefficient service from the rigors of intramodal competition. It has done so, for example, by restricting entry and authorizing collective ratemaking. at the same time the industry is hampered in competing with less regulated modes of travel. The problems caused by Federal regulation have been exacerbated by State regulation. Among other things, States have forced carriers to serve unprofitable routes, thereby weakening their overall financial condition. Deregulation is needed, therefore, if the public is to enjoy high quality bus service at the lowest possible price.

Let me now describe in a little more detail the current problems associated with bus regulation before commenting on the House bill designed to address them.

EXISTING PROBLEMS

Excessive regulation on both the Federal and State levels has severely hurt the bus industry and the public. The regulatory scheme in place today was established some 40 years ago and remains largely intact, despite wholesale changes in the transportation industry and our Nation's transportation needs.

There is no need for the all-encompassing regulation this industry receives. The reasons most frequently advanced in support of regulation are as follows. First, without regulation destructive competition would lead to chronic losses for the industry. Second, regulation is needed to prevent carriers from achieving or maintaining monopolies by predatory practices. Third, regulation is needed to protect the monopoly franchise to achieve economies of scale.

These arguments for regulation are easily refuted. The financial characteristics of the bus industry make it almost impossible for destructive competition to occur under a deregulated environment. To begin with, the ratio of variable to fixed costs is high. For example, through vehicle and fuel taxes bus operators pay for the use of highways only as they travel them. In addition, the buses that constitute a carrier's principal assets are mobile and short-lived, enabling carriers to determine whether they should be replaced, sold, or moved to another market. Finally, the investment in each unit is comparatively small, allowing a company to change its capacity incrementally and diminishing the likelihood of excessive capacity.

Extended predatory price cutting is unworkable in a deregulated environment because reentry by competitors can be immediate. A predator, therefore, would not be able to recoup his losses.

The government need not regulate the bus industry as if it were a natural monopoly. There is no evidence that significant economies of scale exist. In fact, the operating costs per vehicle of many small carriers are lower than those of the largest two carriers.

Regulation of the bus industry has merely served to stifle competition. It has weakened the bus industry by protecting inefficient operators and has harmed consumers by limiting price and service options.

Federal regulation has severely restricted entry in the regular-route sector. The largest two carriers, Greyhound and Trailways, generate about 81 percent of the Class I intercity operating revenues, while the third largest carrier accounts for only about two percent of such revenues. Most regular-route fares are collectively set by a rate bureau dominated by the two largest carriers. Interestingly, this is the most concentrated and heavily regulated sector of the industry, yet it is considered

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tee in support of S. 2245, a bill to eliminate unnecessary regulation of motor carriers. Prior to coming to the FTC, I also prepared several affidavits for the Commission in its filings before the ICC on matters concerning motor carrier regulation.

the least financially sound, one reason being the competition that bus lines face from autos, airlines, and Amtrak.

The problems at the Federal level are exacerbated by State regulation which has injured carriers' interstate operations.[4] In many States, carriers are not allowed to discontinue unprofitable intrastate lines or reduce schedules to reflect market demand. In addition, intrastate fares are reduced to levels that discriminate against interstate passengers. That is, interstate carriers and their customers subsidize the intrastate routes. Consequently, both intrastate and interstate operations have suffered.

In contrast to the regular-route sector, competition has been allowed to work to an extent in the charter and special operations portion of the industry. There, the ICC has been fairly liberal in recent years about granting operating authority. Greyhound and Trailways compete with hundreds of small carriers. Tour rates are often set by individual companies instead of rate bureaus. As a result, Greyhound and Trailways accounts for only a small percentage of total tour revenues. Significantly, the tour portion of the industry, which offers a wide variety of price and service options for the consumer, is generally viewed as financially healthy.

H.R. 3663

The House bill would provide some relief from the regulations that are the cause of many of these problems. The bill would provide for ICC appellate relief from burdensome State regulation in the areas of entry, exit, rates, and schedule reduction. It would also reduce entry barriers on the Federal level by removing the requirement for evidence from potential users of the service. The proposed ratemaking reforms, for the most part, track previous reforms in the trucking area, leaving collective ratemaking largely intact.

My fellow Commissioners and I believe that the House bill, while offering commendable solutions, does not go far enough. Congreess can better serve both the industry and the public by deregulating the bus industry to a greater degree than is proposed in this bill. We are concerned that some of the House bill's provisions may be even more anticompetitive than the present scheme.

We would like to emphasize that small businesses would face enormous difficulties in dealing with the administrative complexities that the House bill retains. The competitive advantage, therefore, woujld go to the carrier best able to deal with the administrative process and not necessarily the carrier able to provide the best service. In short, the House bill retains part of a regulatory structure that is based on outdated concepts about the need for protection against destructive competition and monopoly. This allows established carriers to fight off new competitors through the use of the administrative process instead of competition in the market.

The Commission firmly believes deregulation is the best solution, but also believes that it may be appropriate to provide for a phase-in period for certain provisions to give the industry time to make the change. To our mind, the DOT version strikes a proper balance, deleting unnecessary anticompetitive provisions and allowing the industry time to adjust their operations in preparation for the more competition-oriented environment.

ENTRY

Deregulating entry into the market is necessary to permit competition that would force established carriers to operate with greater efficiency. Free entry would also enable new entrants to fill voids left by carrier restructuring of route networks. Many viable carriers appear willing to expand into new markets if entry barriers were eliminated. A preliminary study by the Department of Transportation examining deregulated Florida bus carriers shows that while they were previously unable to expand service because of restrictive entry controls, they have acted quickly since deregulation to enter new markets.

Under the House bill, entry would not be significantly eased, even though passenger-use evidence would no longer be required. This would occur because evidentiary burdens for new carriers would be increased in the fitness area.

This added requirement will not serve the public interest. Financial fitness is best determined by entrepreneurs, lending institutions, and competition in the market—not by Government bureaucrats. Imposition of burdensome operational and financial fitness requirements would limit entry.

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[4] H.R. Rept. No. 97-334, 97th Cong., 1st Sess., at 53-61 (1981), details some of these problems.

New entrants, who are unable to point to substantial financial backing, would have to settle for narrow operating authority that would not accommodate new markets. Larger carriers would have less difficulty obtaining broader authority. The Government should not place smaller companies at a competitive disadvantage.

The House bill proposes criteria for a protestant to protect its interests that would not be more competitive than current ICC criteria. The principal defect is the reliance on the notion that inefficient or unprofitable services should be supported by revenues from profitable ones. Cross-subsidization is a weak method of ensuring service to small communities or commuters.

The House bill's temporary authority and special "fitness-only" entry provisions are not likely to encourage new or smaller carriers to begin service to new areas. Carriers entering new markets will desire assurance of permanent authority and a broad grant of authority in order to be flexible enough to meet market demand.

The decision to authorize a bus carrier to perform interstate service should rest exclusively on its safety qulifications. For this reason we fully support the DOT position on entry.

RATEMAKING

There is no public benefit to be derived from providing antitrust immunity for collective ratemaking as the House bill proposes in part. Collective ratemaking inflates fares generally. The mileage-based, collectively-set fare structure in the regular-route portion of the industry is based on industry averages and therefore is not a true reflection of any one carrier's costs for a particular service. Operating costs vary markedly among carriers. Many smaller carriers have lower operating costs than the two dominant carriers. this is due, in part, to lower labor costs.

Collective ratemaking also eliminates price competition. Inefficient carriers are protected, while passengers would profit from the entry of new, less costly carriers.

Independent ratemaking is feasible and preferable. As the charter-service sector of the industry shows, carriers large and small are able to price independently. When they do, rates are more competitive. Now is the time to stop price-fixing practices enjoyed by much of the bus industry and with it the dominant role played by the major carriers in the industry.

The industry rate bureau has presented no evidence to support joint-line antitrust immunity. Joint-line fares with connecting carriers can be established without antitrust immunity. Most bus trips are for short distances, and connections are made at established local points. Through-ticketing for longer distances between multiple carriers could easily be handled by local agents working through a central information office.

The bus industry would need time to adjust to a loss of antitrust immunity for joint ratemaking. We support the timetable suggested by DOT. This timetable would provide for early phase-out where carriers can adapt quickly, such as setting single-line fares. Where cooperation with other carriers is required, such as the setting of joint-line fares, a generous adjustment period would be provided.

The Commissioners believe there is no need to study any further the issue of collective ratemaking antitrust immunity. We cannot support the House proposal that the Motor Carrier Ratemaking Study Commission study this issue. If the Congress deems it necessary to do so, however, we suggest a change in the proposed composition of the Commission. The House bill would add three members to the Ratemaking Study Commission with sole voting responsibility on bus industry issues. Two of the new members would be bus company representatives, which would give the industry a voting majority. We believe that a non-industry majority would be more appropriate.

PREEMPTION

There is overwhelming evidence that many States have adversely affected interstate bus transportation through a variety of entry, exit, rate, and scheduling practices. While great care must be taken to maintain the proper State-Federal relationship, historically transportation is one area in which the Federal Government frequently has had to intervene to preserve the free flow of interstate commerce.

The House bill has expertly identified the problem areas, but the Commissioners believe the DOT approach offers better solutions. For example, the House bill imposes a time-consuming, two-step process for carriers seeking relief from burdensome closed-door restrictions.[5] The House bill would require a carrier first to request relief from traditionally recalcitrant State bodies before they could apply for Federal preemptive relief. The DOT bill, however, would allow the ICC directly to remove such restrictions without requiring petitioners to resort to State channels. Since we cannot foresee any circumstance where a carrier already operating over a route should be foreclosed from serving both interstate and intrastate passengers, we believe the DOT approach is preferable.

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[5] Under a typical closed-door restriction, a carrier is prohibited from picking up or dropping off passengers moving between intermediate points within a single State when the operation as a whole is interstate in nature.

The DOT approach on exit procedures also has more merit. The exit criteria proposed by the House would make it difficult for a carrier to receive permission to discontinue an intrastate route even where the market is small. This would be unfair to other States that have a stake in maintaining the financial health of the carrier. The DOT approach addresses the question of whether the State's refusal to allow a carrier to discontinue a route is an unreasonable burden on interstate commerce. The controlling issue would be whether or not revenues from intrastate service cover total operating expense and allow a reasonable profit. The DOT approach would help preserve the economic viability of individual carriers.

TOUR BROKERS

Competition among tour brokers should be encouraged by eliminating Federal licensing. Entry control has restricted licensing so that there are only a few hundred licensed tour brokers. Other travel agents must sell tours through the few licensed brokers and pay a commission for this privilege. Consumers incur added costs as a result of the lack of competition. Strict entry controls also reduce the possibilities for innovative tours being put together by competitive agents. Notably, no other form of travel agent is licensed by the Federal Government.

The House bill's proposed expanded fitness test offers no apparent benefits to the public. Little expertise is needed to be a broker, and the test of safety does not apply because brokers do not operate buses. As for financial fitness, many businesses begin without a bureaucratic credit check and there is no reason why tour brokers should be an exception.

SERVICE TO SMALL COMMUNITIES

Proponents of regulation frequently claim that without regulation, service to small communities would diminish as carriers flock to serve the most lucrative or densely populated areas. However, experience with Federal trucking reform and deregulation in Florida has shown that service to small communities has held steady or improved under deregulation. The ICC has testified before the Congress regarding freight deregulation that reform appears to have brought about an improvement in small community and small shipper service. There are now more carriers willing to serve out-of-the-way points, and freight arrives free of damage more often.

Studies cited by our staff show that service in Florida improved under deregulation. One study surveyed Florida shippers who were *not* located on major highways or in metropolitan areas. All were satisfied with deregulation.

This experience in the trucking industry is consistent with earlier studies that showed that under regulation the common carrier obligation was rarely enforced, that light-density service could be profitable, and that smaller carriers appeared to be the main providers of small-town service.

The Commissioners conclude that, in view of the similarities between busing and trucking, smaller carriers will continue to exist, and carriers will find it profitable to provide light-density service to small communities. There are low investment costs for light-density service, which may include use of low-capacity vehicles to run feeder service to larger points.

Carriers forced to operate at a loss on unprofitable routes means competition will be reduced on profitable routes for the carrier to make money. Unfortunately, the House bill's entry procisions mandate that cross-subsidy should continue. Yet the bill also recognizes that intrastate rates should not be subsidized by interstate rates. We fail to see why what is discriminatory and burdensome in one area is thought to be desirable in another.

CONCLUDING REMARK

Finally, Mr. Chairman and Members of the Subcommittee, I find it anomalous that proponents of deregulation are expected to bear the "burden of proof." In my view, the tables should be turned, and those who reject competition in favor of regulation should be required to demonstrate how regulation serves the public interest. And after 40 years of experience with extensive regulation, nothing is clearer than the fact that pervasive regulation is the problem.

Mr. Chairman and Members of the Subcommittee, that completes my prepared statement. I shall be happy to address any questions you might have.

Appendix

FEDERAL TRADE COMMISSION STAFF ANALYSIS OF THE MAJOR SECTIONS OF THE BUS REGULATORY REFORM ACT OF 1981 (H.R. 3663)[1]

INTRODUCTION

The Bus Regulatory Reform Act (BRRA), H.R. 3663, is an attempt to benefit the public by reducing the burdens of Federal and State regulation on the bus industry. However, it falls short of achieving meaningful reform in many respects.

The features of the bill that are most objectionable are those which would retain much of the complex, protectionist regulatory structure now in place. These include: (a) the unnecessarily broad fitness definition in the entry sections,[2] (b) the overly protectionist and questionable criteria by which protesting carriers can block entry,[3] (c) the continuance of antitrust immunity for collective ratemaking,[4] (d) the narrow and cumbersome preemption provision,[5] and (e) the needless regulation of passenger or tour brokers.[6]

While the bill correctly identifies problem areas its solutions only partially address these problem areas. For example, the bill relies heavily on cross-subsidy approaches: high density routes supporting low density routes; special and charter service subsidizing regular-route service; and commuter operations subsidized by all types of service.[7] Cross-subsidy, however, promotes inefficiency and makes little sense in this industry. There is no incentive to improve service or make it run more efficiently if the carrier can make up for losses by generating excessive profits elsewhere. Cross-subsidy protection is also unnecessary because light density service can be profitable. This industry's comparatively low investment requirements will result in fast replacement for discontinued services. As one industry member has admitted, "[there] would not be a very big capital investment for someone to, under free entry, be able to get in and compete with you."[8] Moreover, intercity buses are not generally used for emergency service, long distance service, or service needed on a regular basis.[9] Thus, it may not be necessary that every point on the map and every rural crossroads have direct service in large, new buses on a frequent basis. We would propose as an alternative a more efficient system where fares reflect costs, and service reflects true market, and not bureaucratically perceived, needs.

Finally, we wish to emphasize that established carriers will be able to use the regulatory machinery retained by the bill to defeat the competitive attempts of smaller carriers. Indeed, the main defect of the bill is that it would lift the burdens of regulation for the largest carriers, but would retain them for the smaller ones. The public interest will not be well served by a transportation system in which a carrier's success depends more on how skillfully it deals with the regulatory process than on its prices and the level of its service.

In this paper we identify alternatives to the approaches proposed by the bill for handling each of these issues. We conclude, however, that the bus industry and the public will benefit most by removal of most Federal regulation and elimination of discriminatory State regulation through Federal preemption.

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[1] This paper was prepared by staff of the FTC participating in its consumer advocacy program. Principal author was Peter Metrinko, assisted by Patricia Schultheiss, Bureau of Consumer Protection, Service Industry Practices Division and Denis Breen, Division of Regulatory Analysis, Bureau of Economics. The views expressed are not necessarily those of the Federal Trade Commission or any individual Commissioner. This paper was prepared prior to proposed modifications to H.R. 3663 by the U.S. Department of Transportation. Consequently, it offers no views on those proposals.

[2] Proposed Section 6 for common carriers, Section 13 for contract carriers, and Section 14 for brokers.

[3] Proposed 49 U.S.C. 10922(c)(3) and 10922(c)(4).

[4] Proposed Section 10.

[5] Proposed Sections 16 and 17, and the intrastate entry provisions of Section 6.

[6] Proposed Section 14.

[7] This cross-subsidy intent is evident in such sections as proposed 49 U.S.C. 10922(c) (3) and (4), which lists evidentiary criteria for defining "public interest" in the entry area.

[8] Testimony of Dennis Long, General Manager of Blue and White Lines, Inc., on behalf of the American Bus Association, Inc., Hearings on H.R. 3662 and 3663 before the subcomm. on Surface Transportation of the Comm. on Public Works and Transportation, 97th Congress, 1st Sess., at 257 (1981) [hereinafter, Hearings].

[9] Transportation Research Board, "The Intercity Bus Industry: Issues and Problems, Background Paper for the Conference on Intercity Bus Transportation," National Academy of Sciences, Washington, D.C., at 4, September 1980 [hereinafter, TRB-Intercity Bus Industry].

I. SECTION 6: ENTRY [10]

A. Arguments for and against entry regulation

Entry barriers have not served a useful purpose in the bus industry. If pervasive scale economies existed in this industry, efficiency would be preserved by having output concentrated in the hands of just a few producers. Maximum rate regulation could be used to ensure that cost savings were passed on to consumers, i.e., to ensure that the monopolist(s) did not exploit market power. Existing research, however, indicates that there are no significant scale economies in this industry. The presence of many small firms indicates that small scale operation is feasible and that larger output (scale of operation) does not lead to lower unit cost.[11] One study has found nearly constant returns to scale for Class I operators, i.e., that a doubling of output leads to approximately a doubling of total cost.[12] This study concluded that:

"Current regulatory policy might be called into question, since there does not seem to be evidence of greatly increasing returns to scale that would justify the current closed entry, loose merger policy that has fostered the development of two national carriers at the expense of smaller regional ones. Opening entry to increase competition might well result in lower fares or improved service." [13]

A different rationale used to justify limits on entry is that the industry could become too competitive without such limits. Regulation is required, according to this view, to prevent chaotic competition and destructive rate wars that would lead to large losses for all carriers for extended periods and deterioration of service to consumers. However, at a minimum, for this scenario to take place, the bus industry would have to have the following characteristics:

1. A high ratio of fixed to total costs—then price could be driven significantly below average total cost before the shutdown point was reached;
2. Large sunk costs—specialized assets that are immobile;
3. Excess capacity due to declining demand—a condition likely to trigger price-cutting.[14]

Intercity bus operations, however, are not characterized by high fixed costs,[15] and the industry's primary assets are buses,[16] which are short-lived and geographically mobile. Furthermore, any excess capacity that may exist in the industry is likely due to regulatory barriers to exit as much as to declining demand. Thus, price could not fall much below unit cost before carriers would take protective action in a deregulated environment. Unneeded capacity would be moved to other markets rapidly. Once a price-cutter raised its prices, swift reentry would follow. The destructive competition argument, therefore, like the natural monopoly argument, provides little justification for the extensive economic regulation of entry in the intercity bus industry.

Still others see a need for entry regulation to prevent carriers from achieving or maintaining a monopoly position through predatory practices. They contend that a predator with dominant market power can engage in below-market pricing until even equally efficient competitors are driven from the market and then raise rates to exploit the monopoly position attained. Entry control is seen as a protective device for smaller carriers to keep out dominant carriers and enable the smaller carriers to enjoy their local monopolies. This theory presupposes, however, that when other firms have left the market and the price is raised, no new firms will rush back in to compete, so that the predator will have an opportunity to recoup losses.

This is not likely to happen in a deregulated bus industry. First, a predatory campaign in the absence of ICC regulation would still be subject to antitrust enforcement. Second, if smaller carriers in the market have greater efficiencies, then it would be extremely costly for the predator to attempt to undermine their local competitive positions. Indeed, there is evidence that smaller regional carriers operate with lower costs than Greyhound, probably due to lower labor costs.[17] Third, the industry is characterized by mobile capital. It would not take a significant investment to return to the industry. Indeed, if a carrier is in a dominant position, it is essential that noneconomic barriers such as administrative entry control be eliminated to allow for quick reentry after a predatory campaign had ended. Free entry would also help to erode the position of the dominant firm in its most lucrative monopoly markets, especially where smaller carriers could use their lower operating costs to offer significant competition.

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[10] Included in the discussion of section 6 are those changes made in the handling of emergency temporary authority applications pursuant to section 15.

[11] E. A. Pinkston, "The Intercity Bus Transportation Industry," at 15 (1975) (unpublished Ph.D. dissertation, Yale University).

[12] F. D. Fravel, "Returns to Scale in the U.S. Intercity Bus Industry,"Transp. Research F., Proceedings—Nineteenth Annual Meeting, at 559 (1978).

[13] F. D. Travel, supra, at 560.

[14] A. E. Kahn, "The Economics of Regulation: Principles and Institutions," Vol. 2, at 172–185 (1971).

[15] Pinkston, supra, at 20.

[16] ICC, Bureau of Economics, "The Intercity Bus Industry: A Preliminary Study", at 78 (May 1978) [hereinafter cited as Intercity Bus Industry].

Another argument for entry regulation is that it is necessary to preserve service to small communities. It is argued that with free entry, carriers would desert small towns in favor of more densely populated areas. This argument assumes, among other things, that the ICC presently enforces the common carrier obligation (i.e., a requirement that a carrier provide reasonably continuous and adequate service to all points it is authorized to serve) and that service to small communities has been adequate under regulation.

It is acknowledged, however, that the ICC rarely enforces this obligation and that many interstate bus service points have been dropped.[18] Moreover, in light density routes in rural areas where the largest carriers prefer not to operate, reducing artificial entry barriers may well attract smaller carriers and thereby expand service to small towns. Smaller carriers with lower overhead and labor costs should be able to operate more advantageously on lightly traveled routes.[19] Research on the trucking industry has shown that small short-haul trucking firms can be profitable even when specializing in light density markets.[20] Another study has shown that small rural communities tend to be served by small trucking firms, not by the large common carriers.[21]

Prior to deregulation of entry in Florida and prior to passage of the Motor Carrier Act of 1980, there were grave warnings from the trucking industry that service to small communities would collapse under deregulation. In fact, however, the opposite has occurred. As former Acting Chairman Alexis testified before the Subcommittee on Surface Transportation of the House Committee on Public Works and Transportation on June 10, 1981 concerning the effects of deregulation of the trucking industry:[22]

> Complaint levels from small communities have decreased even more sharply than those from larger communities. In October 1980, complaint levels were about half of their pre-Act level.
>
> Where small community service has changed, it has generally improved. Of the shippers surveyed in the small community service study, 13.1 percent said more service was available than before the Act, 85.2 percent said the availability of for-hire service was unchanged, and only about 1.7 percent said service was less available. Questions about service quality received similar responses: 16.1 percent of those sending freight said their freight arrived loss-free more often, 3.0 percent said less often, and 80.9 percent said freight arrived in good condition with the same frequency as before.

The ICC did a separate study on the Florida deregulation experience. This study demonstrated that while long term results were still uncertain, the industry had seen new entry, aggressive cost cutting, and operational restructuring by management, as well as extensive rate innovations and numerous rate reductions.[23] Shipper responses revealed that high quality trucking service had been maintained. The report noted that there was no indication that smaller communities were having service problems.

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[17] See pp. 44–45, infra.

[18] TRB-Intercity Bus Industry, supra, at 7.

[19] Id., at 9.

[20] R. L. Banks and Associates, Inc., "Service to Small Rural Communities," in *Regulation of Entry and Pricing in Truck Transportation*, at 140 (P. W. MacAvoy and J. W. Snow, eds. 1977). Analogy to trucking is useful. The investment characteristics of the two industries are similar, *e.g.*, the high ratio of variable to fixed costs, mobility of primary assets, and so forth.

[21] D. A. Breen and B. J. Allen *"Common Carrier Obligations and the Provision of Motor Carrier Service to Small Rural Communities,"* Quarterly Review of Economics and Business, at 86–106 (Winter 1980).

[22] See "Office of Policy and Analysis, Interstate Commerce Commission, Interim Report: Small Community Service Study," June 1981, which provided the basis for these remarks. That report concluded that carriers were aggressively pursuing small community service markets. There is some indication that large carriers are now entering the small town markets because of heavy competition for truckload traffic. See, "The Rocky Road for Truckers," New York Times, January 24, 1982, section 3.

[23] Office of Policy and Analysis, Interstate Commerce Commission, Initial Carrier and Shipper Responses to Intrastate Trucking Deregulation in Florida, June 1981.

A study by the Department of Transportation has assessed the impact of Florida's deregulation of entry of the bus industry.[24] While preliminary in nature, the study revealed significant results. For example, there appears to have been some, but not a major restructuring of operations by regular-route carriers. Greyhound and Trailways have both increased total scheduled weekly mileage since deregulation.[25] The report observed that there was a marked increase in competition among carriers that provide tour services and that the increase in competition has made it easier for people to make use of these services. DOT also studied nine towns where service had been dropped by one of the major carriers. The report concluded that bus deregulation did not appear to have caused significant problems in these towns because the towns retained service from other carriers or service was readily available from nearby communities.

The DOT survey also interviewed representatives from ten Florida bus companies. Their responses indicate that there are many small carriers who wish to expand their own services but who are or were deterred by regulatory obstacles.[26] Many of the carriers mentioned past difficulties with State or Federal regulatory bodies in obtaining authority. Half stated they would like new or additional ICC authority. Half also planned to take advantage of greater route freedom. Several stated that they had been deterred from trying to obtain intrastate and interstate authority in the past because of low chances of success or because of lack of resources to prepare and pursue an application.

Finally, a study was conducted of the Florida freight deregulation experience by James W. Freeman, an Assistant Professor at the University of Kentucky.[27] He found the "results of [his] research have been surprising in that deregulation has proceeded more smoothly than this author expected."[28] While his analysis concerned the effects of trucking deregulation, we expect that the experience of bus deregulation will be analogous given the similarities of the industries. With regard to service effects on small shippers and communities, the study concluded:[29]

"The two non-rate related fears most often expressed by proponents of continued regulation—that small towns and communities would lose service and that some shippers would experience service failures—have not been realized. As discussed previously, no responding shipper reports fewer carriers offering to provide service after a year of deregulation than were available to the shipper under regulation. Also, 100 percent of the responding shippers not located on major highways or in metropolitan areas are satisfied with deregulation. Furthermore, small companies seem no more inclined to support renewed regulation than larger concerns. There is little indication that carriers are refusing to pick up freight."

Thus, present experience indicates that service to small communities will not suffer from the effects of deregulation or substantial easing of entry, and there is evidence that regulatory barriers may be keeping entrepreneurs out of the bus industry.[30]

B. The effects of entry control

It appears that the effect, if not the intent, of restricting entry in this industry has been to suppress intramodal competition. According to the ICC, entry policy has been restrictive to the point that:

"Few new intercity operations have been authorized over the years, and the bus industry has now developed to the point where the Greyhound and Trailways systems dominate most of the long-distance intercity bus markets."[31]

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[24] United States Department of Transportation, Deregulation and Intercity Bus Operations in Florida, A Preliminary Study, March 2, 1981. [DOT-Florida]

[25] *Id.*, at 5. Trailways, Inc., dropped service to eight points, but added service to 10 points, while Annett Trailways added service to 12 points. There was no complete analysis of Greyhound's restructuring. However, a representative of the company believed increases and decreases had balanced out and its system functioned better.

[26] Id., at 39-62.

[27] James W. Freeman, Motor Carrier Deregulation in Florida: A Preliminary Analysis, 1981.

[28] Id., at 3.

[29] Id., at 21-22.

[30] Nor is it clear that persons living in small towns prefer regulation. When Arizona voted to deregulate buses and trucks there was strong support for deregulation even in those counties where population was sparse. *Hearings, supra*, at 303.

[31] *Intercity Bus Industry, supra*, at 9.

Others have concluded, upon examination of applications for new authority, that "in the absence of ICC regulation, more carriers would have entered the industry or expanded operations." [32]

At the same time that entry was being restricted, the ICC was encouraging mergers among principal carriers. The primary means of growth for both Greyhound and Trailways has been ICC-approved mergers.[33] This suggests that dominance of Greyhound and Trailways in this industry is in great part due to regulation, not market forces.

The combination of restrictive entry policies and a merger policy which encouraged concentration, according to an ICC staff study, has meant that:

"The most attractive regular routes are almost certain to be occupied by the dominant carriers. Therefore it is likely that a new application for such routes would draw active opposition and require relatively lengthy and expensive oral hearings." [34]

C. Entry reform in the House bill—applicant's evidentiary burden

The only procompetitive aspect of the entry section of the bill is the removal of the witness presentation burden from the applicant. Traditionally, an applicant in a passenger case would get prospective customers to state that they wished to use the applicant's services or that present services were inadequate.

This proposed change is insignificant, however, and is more than outweighed by the proposed increase in an applicant's burden to prove its fitness.

The change is not significant since the ICC has always had a liberal rule regarding the presentation of witness evidence in passenger cases. The ICC has recognized that evidence from a passenger witness is inherently more general than that which would be offered in an application to transport freight, since passenger transportation is required on an infrequent and unpredictable basis. Therefore, the ICC gives even generalized evidence submitted by public witnesses testifying in a passenger proceeding full consideration.[35]

The bill would increase applicants' affirmative evidentiary burden by expanding the required showing of fitness to include operational, financial and safety fitness. Under present ICC law, the Commission considers only safety fitness and examines the general proposition whether the applicant will comply with its regulations.[36]

While the Report accompanying H.R. 3663 maintains that the additional fitness tests are not significant barriers,[37] we conclude that the fitness requirements proposed in the bill could well be burdensome, especially for a small company. First, it appears that elements of a public need test have become part of the proposed fitness test. In addressing the issue of operational fitness, the House report specifically speaks in terms of geography and volume, and this apparently contemplates some sort of witness or substantial marketing evidence to show service demand. Operational fitness is also said to encompass "planning ability." Apart from self-serving comments on the part of an applicant, it is hard to envision evidence which would meet this test.

The House report directs the ICC to consider who will service and repair the equipment as part of the fitness inquiry. Since there is no technical expertise at the ICC to assess this information, such an assessment would be a fruitless endeavor. Moreover, an applicant could meet this requirement merely by asserting that it had plans to hire the best certified mechanics available. In fact, the glib, sophisticated applicant could present a rosy picture of expert management to be hired, or conjure up superior maintenance programs, and then simply not follow through.[38]

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[32] Pinkston, *supra*, at 38, 41 and 50.

[33] Id., at 38.

[34] ICC, "Report of the Bus Industry Study Group" (October 1979), at 32. While the ICC has eliminated the use of oral hearings to a great extent, the prospective applicant for a regular-route service between major cities may also face extensive litigation after the agency has granted authority. See, e.g., Latin Express Service, Inc., Com. Car. Applic., 132 M.C.C. 289 (1980), in which it took more than six years for an applicant to obtain authority, largely due to opposition by Greyhound and Trailways that included judicial appeals.

[35] See, e.g., Coach Travel Unlimited, Ext.—Special Operations, 128 M.C.C. 68, 74 (1977); Brush Hill Transp. Co. Com. Car. Applic., 112 M.C.C. 348, 356 (1970), and Cook Broker Application, 119 M.C.C. 709, 715–716 (1974). The past ICC law simply reflected the fact that there was nothing meaningful to be gained by such testimony. It would be highly unusual for a bus passenger to be able to state honestly that he or she planned "x" number of bus trips during the coming year.

[36] See, e.g., No. MC-52709 (Sub-No. 303), Ringsby Truck Lines, Inc., decided July 30, 1981 (not printed).

[37] H.R. Rept. No. 97–334, 97th Congress, 1st Session, at 33 (1981).

[38] However, it would be difficult for many small carriers or new entrants to present any meaningful evidence along these lines. For example, a new entrant could not hope to have its garage

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The Commission sensibly dropped operational and financial fitness as elements of an applicant's case for both bus and freight carriers after passage of the Motor Carrier Act of 1980,[39] and there is no evidence that the ICC's relaxed fitness examination has caused any problems. As for financial fitness, the ICC has recognized that many successful companies, which grew as a result of the hard work of an entrepreneur, started with meager financial resources and that this was no reason to deny entry to a carrier.[40] Moreover, in some cases, additional authority may be the very means by which a struggling company can reverse its fortunes. The ICC has also stated it has great doubts about the effectiveness of its past examination of financial fitness, since companies that have gone bankrupt have often received authority immediately prior to their declaration of bankruptcy.[41] The ICC has also pointed out that financial failure rarely translates into service vacuums in an industry with free entry, easy mobility of assets and low investment requirements.[42] As for operational fitness, the ICC has stated that the market should properly judge the efficiency of a carrier's operations.[43] The transportation business is dynamic, and consumers' wishes may change overnight.

We conclude that the evidentiary difficulties inherent in proving operational and financial feasibility could very well mean that established carriers will have no problems proving their cases while smaller carriers with minimal authority or new entrants will find it extremely difficult to prove their cases.[44] In our judgment the entry standards in the bill would only enhance the ability of established, sophisticated protestants to question the experience and financial capability of smaller carriers, and thereby keep potential competitors out of the market. We further conclude that the Federal role in licensing passenger carrier entry should be confined to safety fitness and meeting of insurance requirements.

D. Past experience with entry reform

Legislative reform does not mean that new entrants automatically will have an easy time obtaining authority, as the following examples demonstrate.

1. *How The Trucking Industry Reacted to Legislative Reform:*

Upon passage of the Motor Carrier Act of 1980, the reaction of a portion of the industry was to oppose reform before the ICC and in the courts. For example, the American Trucking Associations, Inc. (ATA), joined by bulk and household goods carriers, filed suit to challenge a Commission policy statement that had interpreted the Act to require that broad authority should be granted.[45] The effect of that suit was to require the ICC to issue narrower grants of authority according to service type (e.g., requiring the insertion of exclusions against bulk or household goods service) even in cases where opposing carriers had not shown that their operations or the public would be harmed.

As part of an apparent campaign of dilatory tactics, four household goods carriers filed appeals to grants of authority in hundreds of cases, even though the Commission had previously ruled that they had no standing to protest because they had no direct interest at issue.[46] As the entire Commission observed in No. MC-141620 (Sub-No. 4F), *Van Bus Delivery Company, d/b/a United Van Bus Delivery Extension-TSI Contract Service,* decided December 16, 1981 (not printed):

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staffed if it did not know what award of authority it would eventually receive. For the new entrant, it may take some time to build an operation. The new carrier may have to shop around for personnel. Some personnel may not wish to cease employment with another concern until they are assured of the stability of a new concern.

[39] See Ex Parte No. 55 (Sub-No. 43), 45 F.R. 86771, 86780, 86782 (1980).

[40] Id., at 86782.

[41] Id.

[42] Id.

[43] Id., at 86780.

[44] In the case of a large and small carrier who file simultaneous applications for authority to serve an attractive city pair, the larger carrier will have an easier time showing that the city pair fits into its routing system and that it has generous financial backing. The smaller carrier may be applying for its first interstate route and may not be skilled in demonstrating that its operation will be efficient.

[45] *American Trucking Associations, Inc., et al.* v. *I.C.C. and U.S.,* 659 F.2d 452 (5th Cir. 1981). The ATA has continued the suit, alleging the ICC has not followed the Court's mandate.

[46] The consolidated proceedings embracing these several hundred proceedings were No. MC-682 (Sub-No. 28), *Burnham Van Service, Inc.;* No. MC-2202 (Sub-No. 673), *Roadway Express, Inc.,* [which alone embraced 223 additional applications], and No. MC-2605 (Sub-No. 22), *Commercial Transportation, Inc.* The finding of "no standing" occurred in *Bekins Van Lines Co., Contract Carrier Application,* 132 M.C.C. 726 (1981). In addition, these same carriers filed protests in several hundred other cases, but chose not to file appeals. Similar mass filings of protests have been filed by several bulk carriers.

"We take official notice of the hundreds of boilerplate protests filed by these appellants in the last several months. With rare exception, none of these was directed to the specific needs of the involved shipper or the specific operational capability of an individual applicant."

Although these cases should have been unopposed and processed expeditiously under the statutory deadlines imposed in 49 U.S.C. 10322, hundreds of applicants were delayed in obtaining their authority. The great majority of the applicants involved were new entrants or smaller carriers, who suffer most from regulatory lag. The ICC is powerless to stop this activity, since it must act on every pleading filed. If a pleading is rejected, that rejection may be appealed.

In sum, even under a liberalized application process, regulation-minded carriers may engage in effective dilatory tactics.[47]

2. *The Bus Industry and attempts at Entry and Rate Reform:*

Historically, segments of the bus industry have reacted against even minimal entry and rate reforms. For example, Greyhound took the Commission to court over the modest proposal to allow carriers to make minor adjustments in their routes for increased efficiency.[48] Another example of this type of activity was the position of the National Bus Traffic Association, Inc. (NBTA), in Ex Parte No. 297 (Sub-No. 4), a proceeding in which the ICC sought to determine whether antitrust immunity should be continued for rate bureau agreements. The NBTA opposed any suggestion that the immunity should be lifted.

One of the most recent examples of industry opposition to innovation and competition occurred in the 1981 case docketed at No. MC-C-10797, *Petition for Declaratory Order—Passenger Transportation without Compensation.* In that case, Kids-to-Camp Project (KCP), a non-profit organization formed with the intention of providing low cost bus transportation for children participating in a camping and educational program, asked the ICC for a ruling concerning the need for operating authority for low cost operations it wished to perform. KCP asserted that although it would accept donations from its passengers, there was no profit motive involved and it would seek only to cover expenses. The Commission initially ruled that since there was no intent to profit, KCP would not be providing for-hire transportation and would be exempt from regulation by the ICC. The American Bus Association (ABA) appealed this decision before the ICC, and is now challenging the ruling in court.[49] Actions of this kind indicate continued opposition to attempts at partial reform and can be expected in the future.

E. Temporary authority reforms

Section 15 would provide for expedited handling of requests by carriers for emergency temporary authority. The House Report recognizes that, given the exit provisions of the bill, there should be an avenue for quick entry.[50] The bill extends the effective time period for the emergency temporary authority granted, in order to give replacement carriers sufficient time to evaluate the long term prospects of the new route.

This is not a significant reform and does not resolve major problems with the permanent authority entry provisions. A potential new entrant may still be reluctant to initiate service on a temporary basis because of the chance that the ICC may not grant it permanent authority to continue the service. It should be noted that permanent authority will not necessarily be granted since, under existing law, a grant of emergency temporary authority does not establish a presumption that permanent authority to provide transportation will be granted, 49 U.S.C. 10928(c)(1). Moreover, requests for emergency temporary authority are often protested, and, in recent years, the ICC's grant rate has been lower than that for the permanent authority area.

F. Fitness-only applications

The BRRA, in its revisions to 49 U.S.C. 10922(c)(5), was intended to provide some regulatory relief for carriers wishing to provide service to small communities. It would eliminate the required finding of public interest where specific conditions have resulted in a loss of service. However, the House Report so heavily qualifies the circumstances under which these provisions could be used that they would have limited appeal to potential applicants.[51]

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[47] It is significant that almost all protesting of trucking applications at the ICC is done by a small cadre of carriers. The ICC's Section of Operating Rights analyzed protest patterns in trucking cases for two months in 1981 and found that 27 carriers (out of 26,000 licensed carriers) filed 75% of the protests. All of the carriers were of a substantial size, and about half were among the top 100 carriers in terms of annual operating revenues.

[48] *Greyhound Corp. v. United States,* 221 F. Supp. 440 (N.D. Ill. 1963).

[49] *American Bus Association v. Interstate Commerce Commission and United States of America,* U.S.C.A., D.C. Cir., No. 81-2078.

[50] H.R. Rept., supra, at 41.

Experience with similar provisions under the Motor Carrier Act indicates that these provisions may not facilitate entry. Under procedures adopted to implement parallel provisions in the Motor Carrier Act,[52] a carrier must prove its qualifications to provide the service. Thus, a protest may be filed on the basis that the carrier does not qualify under the particular "fitness-only" category. Because of difficulties in interpreting the statute, the ICC has been unable to handle expeditiously similar fitness applications for motor carriers of property.[53] As a result of such difficulties, motor carriers of property have filed only a small number of these applications with the ICC. There is no reason to believe that these provisions would be any more effective in the bus industry in facilitating small community replacement service than they have in the trucking industry.

G. Protestant's burden of proof

Portestant's evidentiary burden would be changed under the BRRA, but this would not facilitate entry. Arguably, it has been made easier to protest cases. Under the proposed entry provisions that would be codified as 49 U.S.C. 10922(c)(3) and (4), a grant of authority would be blocked if an existing carrier demonstrated that issuance of a certificate would impair the existing carrier's ability to provide a substantial portion of its regular-route passenger service. The theory behind this provision is that without it, new applicants would apply for excessively narrow grants of authority designed to skim the most lucrative traffic.[54] The House Report states that existing small community service and commuter bus service also are not intended to be adversely affected by the liberalized entry provisions.

Under current law,[55] however, the burden of proof is placed squarely on protestants to prove that a grant will be adverse to the public. Economic harm to an existing carrier becomes relevant only if it leads to a corresponding adverse impact on the public interest. Diminuition of the carrier's own revenue is not relevant unless it can show injury to the public. Added competition is presumed to be in the public interest. Under existing law the protesting carrier must show that the new competitor will not be able to supply additional service if the existing carrier exists and that no other carrier will come into the region to provide the service. It is not clear, therefore, that the proposed bill is as procompetitive as the current law.[56] According to personnel within the ICC's Section of Operating rights there has not been one case since at least July 1980 decided on a protestant's burden. In short, a protestant has not been able to prove adverse public effect in a single passenger or freight case during at least the last 20 months.[57]

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[51] H.R. Rept., supra, at 32. For example, the House Report directs the ICC not to make use of "fitness-only" procedures where carriers wish to provide service between small communities and large cities. It cites as an inappropriate use of these provisions an example where there is lack of service to a small town in Virginia, and a carrier seeks to provide service to, among other points, Washington, D.C. and Baltimore, MD. One would think that this would be a perfect use for this type of provision.

Another example of the narrow scope of these provisions occurs in the rail/air-discontinuance provision of subparagraph (B). There, the new service must be along the same route as the lost air service. More appropriately, the route should be to the city with the nearest large air facility, since it is unlikely that the passenger will view a lengthy all-bus route as a substitute.

[52] 49 C.F.R. 1100.251(h)(6) and (7).

[53] See, e.g., *American Cent. Transp., Inc.-Ext.-Sub. Rail Serv.*, 132 M.C.C. 664 (1981), and, *Great Western Trucking Co., Inc., Extension*, 132 M.C.C. 672 (1981).

[54] H.R. Rept., supra, at 31.

[55] Passenger entry is governed by the policy statement issued by the ICC in Ex Parte No. MC-121, *Policy Statement on Motor Carrier Regulation*, decided September 26, 1979, and pre-Motor Carrier Act entry law [the Motor Carrier Act applied only to freight carriers], including *Liberty Trucking Co., Ext.-General Commodities*, 131 M.C.C. 573 (1979), *affirmed sub. nom. Assure Comp. Transp., Inc.*, v. *United States*, 629 F. 2d 46 (7th Cir. 1980), cert. denied 449 U.S. 1124 (1981).

[56] As a practical matter, existing carriers will have an easier time protesting under this bill, since they will be able to cast doubt upon the adequacy of an applicant's fitness presentation. Under current administration of the Interstate Commerce Act, it is the failure of an applicant to show adequate demand that is used by the ICC to cut down the size of grants or deny applications in their entirety.

[57] This lack of any public harm showing is especially interesting when one considers the high volume of cases on the ICC's docket. During November 1981, for example, ICC review boards handled 314 opposed operating rights cases. They denied 33 in their entirety, and denied 117 in part. The ICC does not segregate its records according to passenger and freight modes, but it is generally believed by the ICC Operating Rights staff that the percentage of grants and denials for both modes is about the same. The overwhelming majority of the cases are, however, for motor carrier of property authority.

Also, the BRRA's proposed protest criteria appear to be based on illogical and anticompetitive cross-subsidy rationales. Under the proposed legislation, the ICC, when deciding whether to grant new authority, is directed to look at the effect on, among other things, commuter operations and service to small communities. The entry section is written so broadly that if an applicant wishes to provide, for example, charter or regular-route service, an existing carrier may allege its commuter operations need the cross-subsidy support provided by excessive profits generated from the services for which the applicant seeks to provide competition. In this example, hinging the success of an application on commuter operations means that persons far removed from the affected commmuter area could have their own choice of charter or regular-route carriers limited by the local rush hour needs of the distant city.[58]

Another unnecessary and counterproductive proposed provision that protesting carriers might use is the service-to-small-communities provision. For instance, an existing carrier may be providing a high-cost service that is inappropriate for a sparsely populated area. A potential competitor may realize that a profitable service can be run by restructuring the local route and using light capacity vehicles. Under the proposed entry provisions, however, the potential competitor would be denied the opportunity to try this alternative if the existing carrier successfully asserted that it must maintain a monopoly position on the route to maintain its financial integrity. This type of solution preserves inefficient operations.[59]

The proposed legislation also fails to recognize that what may be generally needed by small communities is simply feeder service to larger communities. Feeder service need not be expensive nor overly frequent since the typical intercity trip is for a relatively short distance and involves personal or vacation-oriented purposes.[60] Since it is not long haul service, used equipment or small capacity vehicles may be used to keep down costs.

These cross-subsidy justifications are inconsistent with the philosophies expressed in the House Report pertaining to Section 17 of the bill.[61] There the House recognizes that unprofitable intrastate operations should not be subsidized by interstate operations:

"Should State regulatory bodies persist in denying or delaying adequate intrastate rate relief for interstate carriers, then interstate carriers could be forced to either raise rates *in other areas* to recoup losses or curtail or discontinue service on unprofitable routes to minimize losses. Neither of these outcomes are desirable. If a carrier can raise rates on other routes to compensate for intrastate deficiencies, *then one group of bus riders is being forced to pay part of the cost of other riders' trips.*" [Emphasis added.]

Nor do we believe that the enactment of protest standards,[62] as proposed at 49 U.S.C. 10922(c)(8) in the bill, offers any measure of entry liberalization. Under the ICC's current procedures, those protest standards are already in place for passenger cases.[63] The problem with protest standards is that they do not stop dilatory practices, as seen in the *Van Bus* case, supra. Therefore, other than, perhaps, on safety grounds, we would not permit competitors to protest an application for entry.

H. Miscellaneous entry provisions

We note in passing that the section of the BRRA that would be codified at 49 U.S.C. 10922(c)(4)(D), concerning cumulative effects of applications, is ambiguous on its face. According to the House Report.[64] this is meant to apply to a series of applications filed by the same carrier. On its face, however, it applies to any other pending applications for the same traffic.

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[58] The following example could happen. A small carrier in Pennsylvania wishes to obtain charter authority to serve New York City. An existing commuter carrier to New York City has already obtained authority to run charters from points in Pennsylvania. The existing carrier with the commuter authority will be able to prevent the small Pennsylvania carrier from serving its local area since it could argue that its commuter operations into New York City run at a deficit and it needs the charter business from Pennsylvania to subsidize its commuter operations.

[59] Some States have chosen to provide direct subsidies to existing carriers. See, e.g., the relative efforts mentioned in *Intercity Bus Study,* supra, at 101.

[60] Id., pp. 34-37.

[61] H.R. Rept., *supra,* at 44 and 45.

[62] Protest standards define which carriers are qualified to protest, i.e., having standing to appear in opposition.

[63] 49 C.F.R. 1100.252.

[64] *H.R. Rept., supra,* at 32.

I. The exemption approach

In this section we present alternative approaches to our preferred position that all economic regulation of entry be ended. As half-step measures, we suggest that the ICC be given the power to engage in so-called "master licensing" or be given general exemption powers. In this fashion, the ICC can selectively eliminate barriers to entry that serve no public purpose.

The BRRA prohibits the making of "any finding [under the entry paragraphs] which is based upon general findings developed in rulemaking proceedings." According to the House Report, the intention of this provision is to prohibit so-called master licensing proceedings in which the Commission engaged prior to passage of the Motor Carrier Act of 1980.[65] This technique was used with success to reduce entry barriers where there was clear evidence that a greater quantity of a particular type of service was needed. Using this approach, the ICC removed tens of thousands of energy-wasting gateways.[66] in response to the energy shortages of the early 1970's. This flexible tool allowed the ICC to act in response to a crisis in energy consumption by permitting more direct routings.[67]

Because an agency should be able to act in a flexible manner to meet emergencies and changing conditions, we believe that at a minimum the ICC should be given general exemption authority covering the passenger carrier area equivalent to the powers given the ICC under Section 213 of the Staggers Rail Act of 1980.[68] Often, a problem is not of such overall significance that Congress will want to deal with it itself. For example, it was not until the 1980 Motor Carrier Act that Congress addressed the problem of eliminating inefficiencies built into carriers' route descriptions. The ICC, on the other hand, was able to address the gateway problem in 1973 at a time of great interest. The exemption process is a valuable statutory tool, since it allows for the removal of *all* regulations in a given subject area. It is a more flexible approach since the exemption can be lifted if and when events dictate.

J. Interstate entry

The section of the BRRA that would be codified at 49 U.S.C. 10922(c) would permit a carrier denied intrastate entry to seek relief from the ICC from resource-wasting closed-door State restrictions that prohibit carriers traveling an interstate route from picking up intrastate passengers. While we applaud the general intent of the preemption procedures of this section, we believe there are better ways to accomplish the same task. Our primary concern is that the procedures are too complicated. The new provisions would require the interstate carriers to apply first to the State for removal of the closed-door restriction before it could petition the ICC. The resulting two-step process would impose added regulatory compliance costs and delay operation of more efficient service. Smaller carriers would be particulary affected by the costs of using these procedures.

More desirable procedures are available. Legislation could be enacted that would automatically grant carriers intrastate rights identical to their interstate authority. It could be made to apply both to existing holders of authority, who would get "grandfather" rights, and to new entrants seeking interstate authority. We offer this as the preferred alternative becuse we cannot envision any situation where a carrier already traveling a route should be foreclosed from picking up pasengers on the route. We recognize the remote possibility that some carriers could use these provisions to apply for interstate authority solely for the purpose of obtaining intrastate authority. To avoid this, the statute could provide that should a carrier cease its interstate service, the State could petition the ICC for revocation of the intrastate authority. We believe that in time, however, States will come to recognize that added competition on intrastate routes will provide many benefits to their States.

Other alternatives to the two-step process exist. The proposed legislation already recognizes the competence of the ICC to act as the final adjudicator on these issues. The ICC could also be granted authority to act on the initial application to remove the closed-door restriction. States as well as intrastate carriers could be authorized to appear in opposition to protect their interests along with any intrastate carriers.

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[65] See, for example, 49 U.S.C. 10922(b)(4)(C), which was patterned after the ICC's general findings in Ex Parte No. MC-107.

[66] For example, a carrier authorized to provide service from Washington, D.C. to Baltimore, MD and from Baltimore to Cleveland, OH, could join these authorities to perform service from Washington to Cleveland, but it would have had to travel through the common point or "gateway" in the authorities, in this case Baltimore.

[67] *Thompson Van Lines* v. *U.S.*, 399 F. Supp. 1131 (D.D.C. 1975).

[68] See 49 U.S.C. 10505(d).

We believe that extension of the preemption rights to charter and special operations is appropriate. Unfortunately, the proposed preemptive provisions do not apply to situations where a carrier has been denied authority to provide special or charter operations. Otherwise, this could mean that a bus company offering a combined interstate and intrastate regular-route service into a State could be deprived of providing local tour service on the same bus and would have no opportunity to obtain relief from this restriction. The BRRA's proposed provisions are thus inconsistent with the liberalizing provisions of the bill with regard to mixing of regular-route and charter transportation in Section 8. There, it is acknowledged that mixing of these services allows for more efficient equipment use.

Finally, the House version would require that in order for an interstate carrier to benefit from the entry preemption provisions, the intrastate route on which it seeks to provide service would have to coincide with an interstate route. This requirement fails to take into account that under some circumstances, a failure to obtain intrastate authority not coinciding with an existing interstate route may affect the carrier's ability to provide effective interstate operations in a State.[69] At a minimum the bill should provide a carrier denied any intrastate rights the opportunity to come to the ICC and receive a second hearing on the matter.

In short, we believe that a carrier should not be foreclosed from appearing before the ICC and proving that any State action restricting entry has an effect on its interstate operatons. We note that the rate preemption provisions of Section 17 take the preferred approach and cover all rate practices of a State and not just those directly related to concurrent interstate-intrastate operations. There is no reason why the entry section should be so limited.

K. Safety jurisdiction should be transferred to the Department of Transportation

In our judgment, while safety remains a legitimate reason for regulating carrier operations, continued ICC involvement in the entry process will do nothing to enhance safety eforts. Safety jurisdication should rest exclusively with DOT.

Presently, the ICC shares jurisdiction over safety with DOT. The responsibility for establishing and enforcing operational safety standards for motor vehicles rests with DOT's Bureau of Motor Carrier Safety. The ICC has insurance jurisdiction with respect to loss or damage of cargo, but insurance jurisdiction for bodily injury and property damage liability responsibility rests with DOT.

There are several tools which the ICC may currently use to attempt to control unsafe carriers. When a carrier applies for authority, the ICC can, with an appropriate basis, enter a finding of unfitness. Since fitness is a prerequisite to any grant of authority, such a finding will prevent a certificate or permit from being granted.[70]

DOT is permitted to intervene in the economic licensing process at the ICC. In the past decade, DOT has done this in only a handful of cases where a carrier was seeking permanent authority. One reason for this lack of DOT activity has been the unwillingness of DOT to get involved in lengthy ICC proceedings.[71]

One agency should have complete control in the safety area. DOT has a comparative advantage in safety expertise. Since DOT is the primary overseer for safety and insurance regulations and the inspector and record keeper for violations, DOT rather than the ICC should be the initiator of suspension and revocation proceedings based on lack of safety fitness. In our view, the carrier should merely have to register with DOT and file proof of insurance coverage.[72]

There is nothing in the ICC's economic licening process which guarantees that a carrier will operate in a safe manner. An applicant can promise that it will operate safely, but only inspection and its track record will tell the whole tale. Furthermore, the ICC has no direct contact with the carrier during the licensing process, since almost all cases are handled under the "modified procedure" [exchange of testimony through sworn affidavits]. Indeed, the ICC examiner or decisional body assigned to rule on an application almost never has a record of the carrier's safety history before them.[73] In most cases, the examiner or decisional body cannot tell whether applicant's equipment is in disrepair, whether applicant's mechanics are improperly trained, or whether the bus contains safety defects when it is out on the road. Indeed, ICC examiners are not even trained or skilled in DOT safety regulations.

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[69] For example, a carrier could show that the existing intrastate carrier feeding it traffic does not operate appropriate schedules, and the interstate carrier thus receives less passengers at these connecting points which affects its overall revenues.

[70] This does not mean that the ICC can easily shut down the operations of an unsafe carrier. To suspend or revoke authority, the ICC, under 49 U.S.C. 10925, must first issue an order requiring the carrier to comply with the violated regulation before attempting to revoke its certificate.

[71] This was a reason given by some members of a joint task force comprised of staff from the ICC and DOT's Bureau of Motor Carrier Safety studying the problem of coordinating ICC-DOT safety efforts.

[72] Proof of insurance coverage is now filed with the ICC. The function could simply be shifted to DOT along with existing records.

When the ICC has addressed safety issues in the past its lack of expertise in this area has become apparent. One area in which the ICC would be expected to have a great concern is in the transportation of highly dangerous commodities. Yet, the ICC safety effort in this area is highly inconsistent, as the ICC itself recognized in the following proposed policy statement:[74]

"The Commission has not followed a consistent policy in the past with regard to hazardous commodities descriptions in operating authorities. * * * Requiring all carriers to prove before the fact that they will operate safely under the authority to be granted may be an almost wholly speculative endeavor."

One example of this inconsistency is that a carrier seeking authority to haul a compressed gas will receive a limited term authority so that its safety history can be analyzed before permanent authority is granted. On the other hand, if the same carrier chose to apply for broad petroleum products authority, it would not have to undergo this trial period, and could haul the same compressed gas under the broader authority.[75]

The ICC has little relevant experience in the safety area, and its jurisdiction over that area should be removed. A good place to start is the bus passenger area. Although it is obvious that the safety of passengers is of high concern, the bus industry is a relatively low technology industry. Unlike trucking, there is no handling of explosive or toxic commodities. The vehicles are not inherently difficult or dangerous to drive, since they are stable, one-piece units. There are no complex loading procedures, unlike, for example, the heavy hauler industry. The separation of safety considerations from the economic licensing process would serve as a spur to DOT to get more actively involved in safety oversight since it would not have to go through another agency to enforce its regulations. The procompetitive reason for doing this is to prevent carriers from raising *de minimis* safety issues during licensing proceedings as a way to delay the entry of potential competitions.[76]

1. Summary of entry position:

We conclude that all entry barriers which do not provide any substantial public benefit should be removed. We believe the only possible public benefit arising out of a licensing process is in the area of safety and insurance, and we believe this program should be turned over to DOT where it can be administered more effectively through a simple registration program. All carriers wishing to operate on an interstate basis should merely have to register with DOT and show appropriate insurance levels. The insurance function retained by the ICC for buses could easily be turned over to DOT along with existing insurance records. The chief beneficiaries of our proposal would be the small carriers who would be able to start up service with minimal administrative costs and without fear of harrassment from large carriers during the application process and, more importantly, consumers who would have a wider choice of price and service options.

II. SECTION 7: RESTRICTION REMOVAL

This section of the bill is designed to permit the *ad hoc* removal of unreasonable restrictions from the authorities of existing carriers. We see no benefit from employing an *ad hoc* for removing restrictions. A far more efficient approach would be to declare by statute that all passenger authorities are to be reformed in the following manner: (1) All intermediate point restrictions are invalid; (2) All regular-route certificates authorizing service to named points shall be construed to authorize service to all points within the county or counties containing that point; (3) One-way or round-trip restrictions in certificates are invalid;[77] and (4) Special operations and charter transportation are authorized to all points in a county in any case in which the authority is limited to a point.

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[73] The American Bus Association has noted that the exchange of information between DOT and ICC is "virtually nonexistent." *Hearings, supra*, at 188.

[74] Ex Parte No. 55 (Sub-No. 43B), "Acceptable Forms of Requests for Operating Authority—Classes A and B Explosives and Other Hazardous Commodities," published at 46 F.R. 22814 (1981).

[75] Id.

[76] A prime example of this occurred in the case of *Latin Express Service, Inc., Com. Car. Applic.*, 132 M.C.C. 289, 299 (1980). That case was itself characterized by the ICC as an instance where "6 lengthy and contentious years have passed since Latin Express, a small business seeking the transportation needs of Spanish-speaking passengers, sought authority to perform service for which a need has been found."

In that case, opposed by Greyhound and members of the Trailways system, the applicant sought to perform a major north-south service to Miami, FL. One of the major issues in the case was applicant's asserted lack of safety fitness. This evidence amounted to observations by Greyhound employees that on two trips the applicant's drivers had probably exceeded DOT's hours of service regulations. It should be noted that Latin Express had operated during a two year period without a single incidence of personal injury or property damage.

We are also troubled by a statement that the restriction-removal provisions of Section 7 shall not be applicable to the New York-Northern New Jersey metropolitan area that appears in the House Report but not in the statute itself.[78] There is no sound policy justification for this exception. Further, this provision could cause interpretational problems in the future, since statutes are interpreted according to their plain meaning unless an ambiguity appears on the face of the statute.[79]

RATEMAKING ISSUES: SECTIONS 9–12

A. Summary of position

While the BRRA would bring some reform to the area of ratemaking, we believe that these reforms would be insufficient. We see no net public benefit in retention of: (1) antitrust immunity for single-line ratemaking, (2) antitrust immunity for joint-line ratemaking, (3) continued immunity for general increases, or (4) ICC predatory rate jurisdiction.

The bus industry now enjoys legal authority to engage in price fixing, and thus, is able to avoid competing on the basis of price. The elimination of intramodal price competition has had severe anticompetitive consequences.[80] Competition normally forces prices to the level of marginal costs. Intermodal competition, such as from the automobile, places a limit on bus fares, but this acts only as an outer limiting device in the absence of intramodal competition.

B. Evidence of anticompetitive effects from collective ratemaking

Greyhound and Trailways are the sole competitors on most of the industry's major regular routes.[81] Yet, in the past, they have generally charged the same fares, not only in the regular-route sector[82] but in the charter area as well.[83] That little intramodal competition occurs in this industry is suggested by the existence of lower fares when buses face competition from their closest substitute, the railroad.[84] A further indication that fares are higher than they would be if set at competitive levels, at least on some routes, is the fact that the "bus industry's passenger fare structure is generally mileage oriented.[85]

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[77] It should be noted that a common problem in many authorities is that the restriction requires that round-trip service be provided. Both types of restrictions should be eliminated.

[78] H.R. Rept., supra, at 37.

[79] See, C. Sands, "Statutes and Statutory Construction," §§ 46.01, 46.04, 45.02 (4th ed. 1972).

[80] According to the Department of Transportation in a 1977 study, there has been a virtual disappearance of price competition throughout the regular-route portion of the intercity bus industry. U.S. Department of Transportation, "National Transportation Trends and Choices," at 153 (1977).

[81] Submission of National Bus Traffic Association, Inc. (NBTA), in Ex Parte No. 297 (Sub-No. 4), before the Interstate Commerce Commission, 1978, Exhibit R-17 at Appendix B. On 152 of 205 major routes, Greyhound and Trailways were the only competitors. [Hereinafter, NBTA Statement.]

[82] "Report on Intercity Domestic Transportation System for Passengers and Freight," prepared for the Senate Commission on Commerce, Science, and Transportation, 95th Congress, 1st Session, 89 (1977). The lack of regular route competition is staggering. In rural areas, about 75 percent of the routes are served by only one carrier. In metropolitan areas, about 80 percent of the routes are served by two or more carriers. Of this 80 percent, almost all, however, are served by just two carriers. J. Snow, "The Problem of Motor Carrier Regulation and the Ford Administration's Proposal for Reform," in Regulation of Entry and Pricing in Truck Transportation, 34. Trailways has recently begun a lower rates campaign. See footnote 84, infra. However, the duration of this price competition cannot be predicted.

[83] Our statement is based upon a 1978 FTC examination of Greyhound's and Trailway's charter tariffs in all of the states (except Hawaii) and the District of Columbia. It was found that in 28 of the 44 (64 percent) jurisdictions in which both of these companies offer charter service, both use the same tariff. In an additional 5 (11 percent) jurisdictions both use the same tariff with exceptions for specific equipment points. In an additional 6 (14 percent) jurisdictions, although different tariffs are used, the tariffs are similar enough that the rate per live mile for 39 passengers is the same. This leaves only 4 of 44 (9 percent) jurisdictions in which the two companies essentially use different tariffs.

[84] Pinkston, supra, at 114–118. As reported in Traffic World, Feb. 15, 1982, at 49, Trailways has been granted special permission for a tariff involving guaranteed lowest fares. Traffic World in a February 8 article characterized the marketing strategy as enabling Trailways to compete with discount fares offered by Amtrak and airlines. A customer would receive a refund if it later discovered that a cheaper fare was available from another carrier.

Because a carrier's costs are the product of factors such as passenger use, a cost-based rate structure would not rely exclusively on mileage. Consideration of passenger use in addition to mileage would lead to lower rates on those routes where carriers have a high load factor. Where rates are set on an industry-wide basis, however, an individual carrier's load factors cannot be taken into account. Indeed, the Interstate Commerce Commission has characterized the bus industry as being composed of heterogeneous carriers[86] because there is a wide divergence in operating ratios, revenues per bus mile, and cost per bus mile, with wide regional disparities present.[87] Yet, according to the NBTA, regional carriers often charge the same fares on routes they share with Greyhound and Trailways.[88] As stated by the ICC:[89]

"Pricing policy is a basic ingredient in generating revenue. Bus rates are generally based on mileage except for those routes which are seen as competitive with air and Amtrak, and where certain special purpose promotional fares have been instituted * * *. A uniform mileage formula does not consider differences in operating costs and demand characteristics among routes and regions."

There is evidence that smaller carriers can operate more efficiently than Greyhound, probably due to use of lower-priced labor.[90] Evidence of this cost difference between carriers is also illustrated in the testimony given before the House.[91] In describing the California State subsidy program for intercity service, representatives of the California Department of Transportation revealed data that operating cost per vehicle service hour varies in a widely diverse range of ratios for nine carriers under the program. Greyhound's operating cost per vehicle was about double the average of other companies.

Experience in the charter area presents additional evidence that smaller firms may be able to operate more competitively and should be given a chance to set rates independently. Most bus charter companies are small firms that independently set their own rates. Only a fraction of certified carriers belong to the NBTA.[92] Many charter carriers have carved a niche for themselves in local markets, and, operating at lower costs, have no reason to belong to a cartel. Although Greyhound and Trailways dominate the regular-route industry, they have only about 20 percent of the charter market,[93] and face stiff competition from smaller carriers. If Greyhound and Trailways were forced to compete in the regular-route area as well, the result would be a more efficient transportation system.

We thus reject a principal argument of those advocating collective ratemaking, that it leads to the establishment of equitable fares. What it assures is discrimination in the true sense of the word—people are being forced to pay a higher price than is justified by the quality and cost of bus service.

C. The effects of a lack of rate competition

By limiting price competition among carriers, the industry is encouraged to focus instead on service competition.[94] So carriers, especially Greyhound and Trailways, have tended to compete in metropolitan markets by maintaining a high level of service frequency. This activity raises the costs of providing service. In turn, the industry's average costs are increased and rate increases are sought (by means of the general rate increase procedure) to cover the added costs. For example, from 1972–1977, a period of declining demand, the NBTA applied for eleven rate increases totaling 64 percent[95] and received increases totaling 58 percent.[96] After receiving the increases, industry members had little incentive to cut back on service to meet declining demand.[97] This situation will tend to result in increased fares borne by the consumer. In short, the NBTA, aided by the collective ratemaking mechanism, encourages the provision of excessive service in the face of deteriorating demand.

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[85] Intercity Bus Industry, supra, at 49.

[86] Id., 55, 58.

[87] Id., 56.

[88] NBTA statement, Exhibit R-17, at 4.

[89] *Intercity Bus Industry, supra,* at 122–123.

[90] Operation and maintenance has always been, by far, the largest expense of the bus carrier, generally accounting for about 80 to 85 percent of expenses. *Intercity Bus Industry, supra,* at 48. See also *Pinkston, supra,* at 20–22. This includes drivers' salaries. The largest expense is labor cost, which amounts to about 60 percent of all operating costs for Class I carriers. This proportion is seen as much higher for the large Class I carriers than for the smaller ones. Many small carriers, are not unionized. It has been estimated that operating costs of small carriers are about 30 percent less than those of major carriers. *TRB-Intercity Bus Industry, supra,* at 6.

[91] *Hearings, supra,* testimony of Lee Deter and Donald Dean, Division of Mass Transportation, California Dept. of Transportation, at 475.

[92] *Hearings, supra,* at 284.

[93] *TRB-Intercity Bus Industry,* supra, at 6.

[94] The airline industry experienced a similar profusion of service competition when the CAB's rigid mileage based formula requiring equal fares for flights of equal distance prevented carriers from reducing fares only on particular routes. Supplementary Information to Notice of Proposed Rulemaking in Domestic Passenger-Fare Level Policies, Domestic Passenger-Fare Structure Policies and Discount Fare Policy Proposed Interim Changes, Dkts. 31290, 30891, at 5. In a naturally competitive industry, when a rigid price structure keeps prices from falling to marginal cost, costs will rise (through service competition) to the level of prices.

While passengers value additional service, the problem is that the extra cost is greater than the incremental value and is spread to other passengers who do not receive the benefit of the extra service. The optimal fare/service combination would consist of lower fares and less frequent service, a combination that would be produced by unregulated competition.

D. Rate stability

The contention that collective ratemaking protects against chaotic changes in the rate structure is untenable. If fares are based on costs, as they are in an unregulated market, they change as costs change. This does not equate to instability. Carriers engaged in collective ratemaking are subject to the same cost changes as those engaged in competitive ratemaking. There is thus no reason to expect differences in the frequency of rate changes such that "chaotic" conditions arise.[98] Rather, the prohibition of collective ratemaking should result in more price competition on competitive routes.[99] Indeed, fares should be flexible, responding to changing market conditions.

E. Interlining and collective action

The NBTA has argued that, absent immunity to price fix, interlining would cease and the nationwide network of bus transportation would disintegrate. Yet the very nature of the industry belies this contention. A predominant portion of the interlining, excluding interlining between Greyhound and Trailways, occurs between end-to-end connectors, with the smaller carriers serving as feeders into and out of the Greyhound and Trailways networks. Because end-to-end connectors are not competitors, discussions between them need not give rise to price fixing charges even absent immunity. Hence, antitrust immunity is not needed to permit free discussion of such joint-line rates.[100] Of course, antitrust liability would not necessarily attach even to discussion of joint rates by carriers with partially overlapping authority as long as the particular carriers involved in the negotiations confined their discussions solely to setting joint rates. Only if they exceeded these boundaries by discussing and fixing rates on routes where they competed for traffic would antitrust liability ensue if immunity was not provided.

The assertion that discontinuance of the immunity would make it almost administratively impossible to arrange interlines because of the extensive pairs of carriers involved is also doubtful. This contention of the NBTA rests primarily on the assumption that interlining commonly involves complicated multiple-carrier routings.[101] The fact that the average bus trip is 115 miles,[102] however, indicates that much interlining involves local carriers cognizant of mutual routing possibilities.

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[95] NBTA Statement in I & S M-29412; (November 1977). (Statement of Eugene F. Bilz, at Table 3, p. 9); I & S M-29089.

[96] Id.

[97] From 1971–1976, passenger miles declined by 13 percent and the number of revenue passenger carriers decreased by 17 percent. *Intercity Bus Industry, supra,* at 64, 66. On the other hand, bus miles operated declined by only 7.5 percent and the number of buses owned decreased by only 2.6 percent. *Intercity Bus Industry, supra,* at 39, 78.

[98] Examinations of rate structures in deregulated markets corroborate this. See Report to the Congress by the Comptroller General of the United States, "ICC's Expansion of Unregulated Motor Carrier Commercial Zones Has Had Little or No Effect on Carriers and Shippers," June 26, 1978; W. Bruce Allen, Steven Lonergan, and David Plane, "Examination of the Unregulated Trucking Experience in New Jersey" (1978).

[99] *Pinkston, supra,* at 67, 113.

[100] William F. Baxter, Assistant Attorney General, Antitrust Division, United States Department of Justice, before the Motor Carrier Ratemaking Study Commission, November 18, 1981, pp. 8–9. An example of the common type of interlining is provided in Greyhound's statement in Ex Parte No. 297 (Sub-No. 4). In it, Greyhound describes interline service it offers in conjunction with three other carriers, Jefferson Lines, Oklahoma Transportation Company and Orange Belt Stages, between Atlanta, Georgia and San Francisco, California. All of the connections encompassed in this interline are end-to-end. As such, the interlines could be arranged among the involved carriers without fear of antitrust prosecution.

The map of motor bus routes included in NBTA's filing in that proceeding further illustrates the prevalence of end-to-end connections. NBTA Statement, Exhibit R-1 at Appendix C. It shows that outside the major cities most carriers have monopolies on their routes. As stated, it has been estimated that 75 percent of rural routes are served by only one carrier. *J. Snow, supra,* at 34. Under these conditions, the majority of connections are bound to be end-to-end.

Even if long distance interlining were prevalent, the system would still function easily. The NBTA alleges that without antitrust immunity, interlining for long distance trips would result in undue complexities for local ticket agents. Supposedly, these agents would be swamped with tariffs and be unable to write through-tickets. Passengers would be inconvenienced. Agents, deprived of needed revenues from through-ticket sales, would leave the business as their revenues declined.[103] We disagree with this analysis. Even assuming a preponderance of long distance routings, a ticket agent need not be swamped with tariffs. Surely some entity (perhaps the rate bureau itself) would enter the marketplace and offer a route and rate information service via toll free telephone.[104] Indeed, it is hard to believe that complicated cross-country schedulings would be left to the uneven talents of local agents. A computerized system containing all rate and schedule information could provide the passenger with a choice of different rates and schedules for complex journeys and could even indicate optimal choices. It is likely that most or all portions of a journey would be covered by joint rates, since locally known carriers would continue to confer about commonly-used routings and feeder carriers would continue to publish joint rates with long-haul carriers. The local agent could still get its full commission since it would be writing the full ticket. The rate bureau could act as a clearinghouse for fare divisions without antitrust immunity.

The contention that it would be administratively burdensome to publish tariffs outside the confines of collective ratemaking is also untenable. To the contrary, absent immunity, tariff publication could occur much as it does now. Disapproval of NBTA's agreement would end its collective ratemaking activities, not its performance of functions such as publishing. NBTA would merely need to modify its publishing procedures to accommodate a wider variety of rates. In our computerized society, it is technically feasible to arrange for the orderly preparation and publication of such rates. That members of the NBTA presently arrange for the individual publication of their local tariffs demonstrates both the carriers' capability and the administrative feasibility of publishing tariffs unaccompanied by collective price setting.

The argument that the cost of tariff publication would be prohibitive absent collective ratemaking is not persuasive. This argument rests on the inaccurate assumption that all carriers would be forced to hire tariff experts if immunity were removed. Passenger carriers already independently arrange and pay for publication of their local tariffs. An end of antitrust immunity would merely necessitate the extension of such activity to encompass joint rates.

It has been contended that discontinuing joint-line rate immunity would diminish use of interlining and financially injure small carriers,[105] most of whom specialize in the short haul sub-market of the industry. There is every reason to conclude, however, that even without immunity, the large carriers would continue interlining with the smaller ones. Interline revenues account for 11 percent of Greyhound's regular route revenues[106] and about 25 percent of Trailways' regular route revenues.[107] It is unlikely that either Greyhound or Trailways would want to lose this source of revenue.

A rate bureau performs many beneficial functions for its members. These include those ordinarily performed by trade associations, such as educational, lobbying and clearinghouse functions. Those activities unrelated to collective ratemaking could continue even if NBTA's antitrust immunity were eliminated. Such activities, if properly conducted, are not violative of the antitrust laws. Thus, the distribution of interline revenues as an important bureau activity could occur. In fact, clearinghouses, defined as institutions where mutual claims and accounts are settled, lawfully exist in many industries.

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[101] The example used by the NBTA involves a trip from Berlin, NH, to Nogalez, AZ. *Hearings, supra,* at 281.

[102] *TRB-Intercity Bus Industry, supra,* at 26.

[103] *Hearings,* supra, at 275. This analysis by the NBTA overlooks the fact that ticket agents at other ends of the route would be getting the revenues, and over time revenue distribution would balance out.

[104] According to a member of the ICC's Bureau of Traffic, local agents primarily keep only local tariffs and obtain information on long distance movements by calling the involved carriers.

[105] Hearings, supra, at 282.

[106] Id., at 288.

[107] Id.

The final argument used to justify this immunity, that unsophisticated carriers depend on bureau-set rates, is unfounded. As recited earlier, smaller carriers have been successfully pricing their charter services for years independent of rate bureaus. None of the studies of the Florida deregulation experience suggests that smaller carriers have had difficulties pricing. Equally complicated pricing is performed within many industries by small companies.

We conclude there is no need for antitrust immunity for collective ratemaking. We do appreciate that it may take the industry some time to adjust to loss of antitrust immunity, and a phase-in approach could be warranted. In this regard, the end of the immunity for single-line rates could be almost immediate. Joint-line rate establishment requires cooperation between carriers, and a slightly longer period may be appropriate before ending this immunity.

F. ICC predatory rate jurisdiction

Under the BRRA, the ICC would retain the authority to suspend or investigate proposed rates on the basis that they were predatory. We believe there is no need for ICC oversight in this area. This industry, with its highly mobile assets, low fixed costs, and low entry costs, is an especially inappropriate area for ICC predatory rate jurisdiction. A predator would find it very difficult to recoup losses in a deregulated environment since once it raised fares, carriers would likely reenter the market. Retaining such rate jurisdiction runs the risk that carriers with high fare levels will engage in intramodal warfare by seeking to block rate decreases before the ICC against carriers wanting to offer lower fares. This has occurred in the freight industry where carriers' attempts to beat competition by lowering rates have led to substantial legal controversies that have discouraged rate initiatives.[108]

G. The Motor Carrier Ratemaking Study Commission

We believe that there is no need for further study of collective ratemaking antitrust immunity. The evidence presented in this paper establishes that antitrust immunity for collective ratemaking has severe anticompetitive effects on intramodal competition and has little public benefit. In addition, it is clear that the bus industry can function quite well without such immunity.

In the event that Congress chooses to have this issue studied further, however, we are also concerned that the proposed changes in the composition of the Motor Carrier Ratemaking Study Commission may lead to a biased analysis on bus issues. Subsection 10(e) of the bill would add to the Commission three members who would have sole voting responsibility on bus issues. Two members would be bus company representatives, thus giving the bus industry control over all final recommendations concerning collective ratemaking in the bus industry. A better approach would be to reduce the bus industry representation to one person, or allow voting on bus issues by all members of the Commission. We might add that the majority of the Commission members studying trucking issues are not affiliated with the trucking industry.

IV. MOTOR CONTRACT CARRIERS SECTION 13

For the reasons set forth in our discussion of common carrier entry, there is no sound justification for retention of economic entry controls for motor contract carriers of passengers. In addition, the proposed BRRA leaves untouched a serious impediment to the growth of contract carriage. Under current law, contract service may be provided only to a limited number of persons.[109] In many cases, the ICC has interpreted this to mean that the carrier may not serve more than eight persons or groups under contract. The Motor Carrier Act eliminated the limited-number-of-persons impediment for trucking, and the legislation here should follow suit.

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[108] See "Rate Discount Battle Between Roadway, PIE Held Up by Court Action," Traffic World (September 21, 1981); "Truck Lines to Seek ICC Guidelines on Permissible Types of Discount Tariffs," Traffic World (October 26, 1981), and ICC Special Tariff Authority No. 82–0150, Rescission of Authority to Show Shippers' Names (Decided October 9, 1981).

Indeed, in view of the stiff competition buses face from other modes, especially the passenger automobile, there is probably no need for any maximum or minimum rate jurisdiction by the ICC. While historically bus has been the cheapest way to travel, the differential between the costs of bus and air or rail travel has been narrowing steadily. *TRB-Intercity Bus Industry,* supra, at 5. For example, during March 1982, one airline, Texas International, has offered fares between major cities lower than those in place for Greyhound and Trailways. An appropriate first step toward the elimination of ICC rate regulation would be the establishment of a broad zone of ratemaking freedom.

[109] 49 U.S.C. 10102(13)(A).

V. BROKERS SECTION 14

The BRRA proposes to continue the imposition of entry barriers for persons seeking to become passenger brokers (i.e., travel agents who arrange bus tours). The BRRA would employ a fitness test examining a potential licensee's financial, operational and safety fitness. We believe that licensing of passenger brokers by the Federal Government is unnecessary for the following reasons.[110] There is no reason to license bus travel agents when agents arranging travel by other means—air or rail—are not required to be licensed by the Federal government. The ICC found in Ex Parte No. MC-96 (Sub-No. 2) that passenger brokerage is not a highly technical area that requires a licensing process to assure the technical expertise of its practitioners.[111] It noted that many persons licensed as brokers had no prior experience in the travel industry.[112]

Federal licensing requirements have imposed severe entry constraints. The number of authorized passenger brokers has always been low, especially compared to general travel agents.

For example, for the years 1966 and 1976, the number of brokers was only 278 and 465, respectively, while the number of Air Travel Conference travel agents was 5,972 and 13,661, respectively.[113] The ICC has concluded that cumbersome application procedures were a deterrent to the potential applicant, and referred to statistics from the "Little Study" that 23% of the responding brokers had spent over $10,000 in legal and other expenses in obtaining a broker license.[114]

The fitness criteria for obtaining a license that would be imposed by the BRRA would serve no useful purpose. The safety fitness requirement is plainly inappropriate. Brokerage does not ivolve the operation of buses. Brokers merely use ICC authorized carriers. The House Report[115] defines operational and financial fitness to mean that an applicant can plan the proposed services in a satisfactory manner within the areas proposed to be served and at the *locations* (emphasis added) at which it plans to conduct operations. While the proposed legislation seems on its face to be a fitness test, once again other elements have crept into the formula. Apparently the applicant will have to establish some nexus between local demand for services and its own operational ability. This is unnecessary. The marketplace for transportation is dynamic and it will weed out inefficient competitors. This is especially true in the area of leisure travel, where demand is often a product of salesmanship. We can see no better example of where entry regulation should be eliminated.

Another costly roadblock to small businesses is the bill's proposed requirement that the applicant show the "locations at which the applicant plans to conduct his business operations."[116] This continues current policy at the ICC which is to require that the broker's license contain not only the geographic areas to and from which its patrons travel but also the location of its office.[117] Normally, a broker will start its business at one location. If after a time its business is expanding and the broker wishes to have an office in a new location, it must file a new application, even through it might still plan merely to arrange passenger transortation from the same group of States. This requirement has functioned as a device to protect existing brokers from competition[118] and should be eliminated.

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[110] Many of our observations are taken from prior ICC reports on this subject area. The Commission in Entry Control of Brokers, 126 M.C.C. 476 (1977), concluded that a fitness-only entry test should be adopted. That decision was challenged by the National Tour Brokers Association (NTBA) and was subsequently overturned on procedural grounds. The ICC renoticed its proposition and issued final simplified licensing rules in Ex Parte No. MC-96 (Sub-No. 2), *Passenger Broker Entry Control,* decided November 8, 1979 (not printed). The NTBA also took this case to the U.S. Court of Appeals for the District of Columbia Circuit. The ICC's decision was affirmed in No. 80-1037, *NTBA* v. *ICC and U.S.* (D.C. Cir. January 15, 1982).

[111] Ex Parte No. MC-96 (Sub-No. 2), supra, at 19.

[112] Id., at 18.

[113] Arthur D. Little, Inc. and Opinion Research Corporation, "Data Collection for the Characterization of the Tour Broker Industry," June 1977, at 13.

[114] Id., at 11.

[115] H.R. Rept., supra, at 41.

[116] Id., at 41.

[117] Ex Parte No. MC-96 (Sub-No. 1), *Passenger Broker Practices,* decided July 25, 1979 (not printed).

[118] *Paragon Travel Agency, Inc., Ext.-Mass. and R.I.,* 100 M.C.C. 641, 643 (1966).

VI. EXIT POLICY SECTION 16, DISCRIMINATORY STATE REGULATION SECTION 17

A. Federal preemption and the issue of federalism

States should not be permitted to use restrictive or anticompetitive actions to disrupt or penalize the interstate transportation system. Before discussing the merits of the BRRA's preemption provisions, it is necessary, however, to review the proper Federal role in transportation.

The area of transportation historically has been a matter of Federal concern. While much of the criticism aimed at the usurpation of local and State Powers has as its target the excessive use of the Commerce Clause, it is important to understand that the intent behind the enactment of that clause was to remove local impediments to trade and transportation.[119] Indeed, there has been a longstanding Federal interest in the smooth functioning of a national transportation system. For example, to assure shippers reasonable access to such a system, Congress passed the Interstate Commerce Act in 1887. Although the authority of the ICC was initially limited, it began to achieve more power after a series of favorable Supreme Court decisions, such as the so-called *Shreveport* case,[120] where the Court recognized that Federal authority could reach to purely intrastate rail rates if that was necessary to the effective protection of interstate commerce. In *Shreveport,* railroads in the region of Louisiana and East Texas were charging more for traffic transported between Shreveport and points in East Texas than for longer hauls between cities in Texas. Texas businessmen thus enjoyed a discriminatory advantage when shipping between points in Texas. Most certainly the present interpretations by the Supreme Court of the Commerce Clause powers of Congress give the Federal government broad power to regulate business activities within a state.[121] That power, of course, should be exercised only as is appropriate and necessary.

B. Alternative to the House preemption provisions

Our chief concern is whether the preemption reforms proposed in the BRRA go far enough and would be accessible to carriers at different economic levels. One desirable alternative to the piecemeal approach of Sections 16 and 17 may be to proscribe any rate, exit, schedule reduction, or entry regulation by States of carriers that operate in interstate commerce. There is widespread evidence of discriminatory and dilatory state action that has adversely affected interstate carriers;[122] sweeping change is called for. We note that most of the ills cited in the House Report concern problems encountered by Greyhound and Trailways. Doubtless they will act to remove impediments to their operations with great speed. Smaller carriers, however, will face a difficult choice over whether it will pay in the long run to undergo the administrative expenses involved in pursuing the preemption remedies that would be available under the BRRA. We thus propose, as one alternative, that the legislation simply forbid State regulatio of any exit, rate, entry or schedule reduction practice where a carrier was operating as both an interstate or intrastate carrier upon the passage of the BRRA.[123]

It may be questioned whether this approach is appropriate since problems very depending upon the regulatory attitude of each State. However, substantial Federal preemption should not depend upon a finding that anticompetitive or discriminatory practices exist in the same degree in every State. Widespread evidence of overrestrictive State regulation exists and that evidence justifies total preemption of rates, exit, entry and scheduling. If Congress decides not to adopt this approach, we offer suggestions as to how the case-by-case approach might be improved.

A bus carrier wishing to take advantage of the BRRA's exit and schedule reduction provisions would have to satisfy certain conditions which severely limit the potential for relief and ar unnecessarily burdensome. For example, in order to take advantage of the exit preemption provisions provided by the BRRA, the proposed service discontinuance or reduction would have to apply to a route for which the carrier also had interstate authority. This "solution" overlooks the possibility that a carrier with substantial interstate operations within a State might find the biggest drain on its resources to be an interastate route for which it had no corresponding interstate authority. At the very least, a carrier should be allowed to argue before the ICC that such a situations is occurring to the detriment of its interstate operations. It appears that this requirement for concurrent routes is inconsistent with proposed Section 17, where it appears that preemption of *any* intrastate rate practice may occur.

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[119] David K. Watson, "The Constitution of the United States," (1910), at 38–45, 453–470.

[120] *Houston, East & West Texas Railway Company* v. *U.S.,* 234 U.S. 342 (1914).

[121] One of the more recent expositions of the Commerce Clause powers is found in *Hodel* v. *Virginia Surface Mining and Reclamation Association, Inc.,* 69 L Ed 2d 1 (1981), which rejected a pre-enforcement challenge to the constitutionality of the Surface Mining Control and Reclamation Act of 1977.

[122] See, as partial examples, H.R. Rept., supra, at 53–61; Hearings, supra, at 182, 191–194, 215–219, and 552.

[123] This is similar to the course of action taken under the Airline Deregulation Act of 1978, Public Law 95–504, 92 Stat. 1705, as codified at 49 U.S.C. 1305.

In addition, the carrier wishing to leave an unprofitable intrastate route would have to apply to the State before it sought final relief from the ICC, although there may be reason to believe that the carrier would not get authorization from the State to discontinue the losing operation. We propose that the carrier be allowed to seek relief directly from the ICC. This would simply eliminate the two step process and provide a faster means to cease inefficient operations.

Another objectionable feature to the exit proposal is the precondition that in order to take advantage of the preemption process, the carrier must apply for authority to discontinue its interstate authority under 49 U.S.C. 10925 before the ICC. The ICC has chosen to be virtually out of the schedule and discontinuance business for many years.[124] Requiring the ICC to renew scrutiny of interstate exit after a long hiatus would seem to serve no useful purpose. The regulatory lag inherent in the BRRA's complicated exit procedures is thus magnified since the ICC must have granted or indicated it will grant interstate exit before the two-level exit preemption process could even begin.[125] It is not possible to predict the extent of the total regulatory lag time since the ICC has no procedures in place for interstate discontinuance proceedings.[126] The multiple step process and the length of time added to the period in which carriers might successfully abandon routes would penalize those carriers least able to afford extensive hearings or to withstand long periods of low profitability.

We also question whether the discontinuance standards proposed in the section of the BRRA that would be codified at 49 U.S.C. 10935(g) are appropriate. The ICC, in its appellate capacity, is directed to consider whether a carrier-applicant has received an offer of financial assistance, whether the route to be discontinued will leave the area with no other service being available, and whether granting the discontinuance petition will adversely affect commuter operations.

Under the test proposed by the BRRA, however, lack of service to an area could justify requiring a carrier to run a losing operation if that is the last service available. This approach fosters inefficiency and is unfair to the public in the long run. A State should not be allowed to hold a bus company hostage to a route which only few members of the public care to use. Such an action would be detrimental to the riding public in other States who may also rely on the service of that carrier and who have an equal interest in preserving its financial health.

We believe one portion of Section 17 is ambiguous in its present form. It is not clear from the provisions of proposed Section 17 whether as a precondition to preemptive relief, the intrastate rates or practices for which preemptive relief would be sought would always have to correspond to an interstate route. Under the section of the BRRA that would be codified at 49 U.S.C. 11501(e)(2)(C), for example, it appears that relief from unreasonably burdensome scheduling practices would be preconditioned on situations where interstate transportation was provided by the carrier on the same route. However, under the section of the BRRA that would be codified at 49 U.S.C. 11501(e)(1), preemption relief would be warranted as to *any* rate, rule or practice. It thus appears that *all* rate practices might be preempted, since, for example, general rate increases would be covered. In the rate area, at least, there appears to be implicit recognition that a State action which has no specific connection to a specific dual interstate-intrastate route may nonetheless have a burdensome effect on interstate commerce. This broader rationale shoud be extended to the schedule reduction provisions of this section as well as to the exit provisions of Section 16 and the intrastate entry provisions of Section 6.

Senator DANFORTH. The next witness is George Sheldon, Governmental Operations Committee, Florida House of Representatives.

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[124] This is admitted by the ICC's own staff. See *Intercity Bus Industry,* supra, at 11-12.

[125] We question how the ICC can indicate it "will grant" such an authorization. Presumably, a carrier would be on safe ground only when the ICC action was administratively final.

[126] It does require public notice although the ICC places no time limit on this. See 49 CFR 1063.6(b).

STATEMENT OF GEORGE H. SHELDON, GOVERNMENTAL OPERATIONS COMMITTEE, FLORIDA HOUSE OF REPRESENTATIVES

Mr. **Sheldon**. Mr. Chairman and members of the committee, thank you for the opportunity to be here. I have some prepared comments that I would like to enter for the record.

I currently chair the Committee on Governmental Operations of the Florida House of Representatives. I was chairman of the Committee on Regulatory Reform, which deregulated in 1980 the trucking and bus industry in Florida.

We in Florida had a very similar scheme to that which you have at the Federal level, substantial burden of proof on entry, substantial process in terms of trying to go into the trucking business.

Just before the legislative session we deregulated the industry in Florida. There was a man by the name of Henry Browning who wanted to provide transportation to those people who lived in Perry, which is 50 miles outside the city of Tallahassee to Tallahassee to go to work. Greyhound, Trailways, none of which competed with the service that he was trying to provide, objected to that.

He wound up going through about 78 application processes in order to obtain and finally, with a substantial amount of restrictions, a substantial amount of legal fees, was able to obtain that service.

But you find, as carriers try to get into providing trucking service, that it is a costly, lengthy process. One carrier went through 44 hours of hearings and spent $30,000 in legal and accounting fees and ended up with a route that was 8 miles long. That is $3,700 a mile for providing that service.

Other carriers are able to get in but have to comply with certain restrictions once they operate. One carrier was prohibited from having restrooms, reclining seats, and air conditioners on his vehicles because there was a feeling that competed with other carriers.

Another carrier could only uses two buses at a time and could not advertise its schedules. Another carrier was forbidden to drop off and pick up passengers in cities even though they passed through those cities.

The conclusion of the Florida Legislature was that the regulation in Florida did not work to the benefit of the consumer. We made the decision to deregulate. We did that with cries that there would be chaos in Florida, that fly-by-nighters would flood the market, ripping off consumers, that there would be cutthroat competition and that small towns would lose service.

The bottom line is now after 2 years of experience, none of those things happened in Florida. For instance, ridership, Greyhound reports, is up 15 percent.

Package service in the first 9 months of 1981 Greyhound reports that the number of packages it carries rose 20 percent. Approval of controls meant that carriers could haul all kinds of packages, but they had to wait 6 months to get that through. They could not compete, for instance, with United Parcel Service.

What has happened is Greyhound and Trailways have cut the amount of time that it takes to travel, for instance, the Tallahassee-to-Tampa route, 250-mile route, is now 2 hours shorter, meaning that their ridership on that route is up 21 percent. The consumer benefits as a result of that.

In terms of small towns, Trailways, for example, dropped eight small towns in north Florida, yet increased their total scheduled mileage by 7.5 percent. Greyhound dropped small towns in central Florida but added 8 percent in terms of scheduled miles.

And as Greyhound and Trailways began dropping towns, other companies came in. Trailways came and picked up Jasper, a small town of 2,200 people, between Tallahassee and Jacksonville, simply because the citizens of that town requested it. And Greyhound still maintains several flag stops in those small towns.

A DOT study recently completed in Florida indicates that small towns have not been deprived of bus service, because it is still available to them at a distance of 9 to 21 miles.

But the real winner in Florida has been charter bus service. And our State is unique from the standpoint that it is a high tourist economy. We were underserved in the charter bus service. The number of companies in Florida has swelled from 25 before deregulation to between 150 and 200 companies currently.

And rates have fallen. For instance, the average charter price for a roundtrip from Orlando to Tampa has fallen from $350 to $295. Senior citizens, in my opinion, have better access now to charter service. And tourism has substantially benefited in our State because of the increased availability and reduced prices.

The hotel and motel industry, Florida Attraction Association, the Florida Chamber of Commerce, have all overwhelmingly endorsed what has been occurring in Florida.

From all of this, I can confidently say that deregulation of the bus industry has benefited the people of Florida. We have seen increased service, reduced prices, enhanced business climate caused by the entry of small businessmen.

Service is gradually becoming available to small towns that had lost it after deregulation. Those routes that were profitable will receive service eventually.

Lifting restrictions on small size of packages that buses carry can provide further incentives for companies to continue to service small towns.

I see no reason for Congress to halfway deregulate the busing industry. Even half-regulation imposes a cost on the public and burdens on the industry that are not justified when measured against the benefits of full deregulation. The same kind of total phaseout used for airlines is suitable for the bus industry.

Should you decide to fully deregulate, which I urge you to do, please consider the impact on the industry of 49 States regulatory systems. For deregulation to be completely effective, Federal deregulation must be accompanied by State deregulation. Otherwise, the busing industry will be faced with continued regulation from the States.

We faced a similar situation in Florida. As the State got out, local governments began to proceed with the enactment of licensure and route restrictions. So the State of Florida found it necessary to preempt their power to do so. Florida's experience has shown that deregulation of the bus industry can work to the public benefit without harming the industry.

If it can work in Florida, I believe it can work throughout the country. The conditions in FLorida are not so different from those elsewhere to make the State experience a fluke. Florida is a microcosm of the United States. We have sprawling ubran areas isolated from each other by wide expanses of farmland, dotted with small towns and rural communities.

Florida is not a small State. It takes longer to drive from the State capital, Tallahassee, to Miami than it does to drive from Boston to Washington, D.C.

If bus deregulation can work to Florida's advantage, I believe that that same experience can be repeated for the Nation. We have discovered that government is a very poor allocator of market resources. Its intrusion into the marketplace should be limited to only extreme situations and should come only as a last resort.

The interstate bus system is not such a situation. The Federal Government, by your action, can set an example for the rest of the country and free the bus industry from needless government regulation. And I believe that the consumer will be the beneficiary in the final analysis. Thank you.

Senator DANFORTH. Thank you very much, Mr. Sheldon. That was very good testimony.

Let me ask you this: How many communities in the past 2 years in Florida have seen their bus service discontinued as a result of deregulation?

Mr. SHELDON. The estimates I have seen indicate a total of about 15. Of those, I would estimate that about half of those have been picked up by other carriers.

Senator DANFORTH. Have you or your colleagues in the legislature witnessed any hue and cry as a result of that discontinuation?

Mr. SHELDON. I have received no complaints as a result of small-town loss of service. There was one newspaper article in the northern part of the State, wherein the city of, I believe it was, Apalachicola lost bus service. That bus was a Greyhound bus that went down once a week and picked up four people and brought them from Apalachicola to Tallahassee. There was a huge story, front page.

We went down and found no complaints from the citizens. As a matter of fact, a van service has now developed to fill that void.

Senator DANFORTH. Senator Cannon.

Senator CANNON. Thank you, Mr. Chairman.

I want to be sure that I understand what you mean by "deregulation" in Florida. Are you talking about total, absolute, complete deregulation without any ill effects?

Mr. SHELDON. We sunsetted the entire regulatory scheme July 1 of 1980. And with the exception of safety—and that was immediate—it was a disagreement between the industry. And the legislature finally made the decision to end the entire structure.

Senator CANNON. And you did that also with the trucking deregulation; is that correct?

Mr. SHELDON. Yes.

Senator CANNON. Would your same assessment go for trucking deregulation?

Mr. SHELDON. Trucking has been slower, because I think it is a more cemented industry than the busing industry, and Florida was really underserved. But in trucking, not one city lost service. And there has been a stabilization of rates in our State.

Senator **Cannon**. Now, you have suggested that we should have deregulation without halfway measures. If Congress is unwilling to go the entire distance, which reform measures or deregulation measures would you see it most essential to enact?

Mr. **Sheldon**. Well, I think primarily removal of restrictions on entry are essential. The busing industry, and I think Florida's experience demonstrates that, is a competitive industry. If you allow competitors into the marketplace, then you will see the competition in terms of rate structure.

Senator **Cannon**. Have you had a chance to review the House bill and the proposed administration recommendations?

Mr. **Sheldon**. Not to the extent that I would like to in terms of providing you with a direction as to which to take over the other.

Senator **Cannon**. Now, later today we will be hearing from the National Association of Regulatory Commissioners. And they will stress the need for State regulation. Do you have any idea where the Florida Public Service Commission would come down on that issue?

Mr. **Sheldon**. The Florida Public Service Commission opposed us 2 years ago when we eliminated regulations. It is very difficult for an agency to say the work they have been doing for 50 years is unimportant. So they did not say that.

However, their opinion today is that the action of the legislature—and I think I can speak for the entire Commission—is that the action of the legislature was appropriate.

Senator **Cannon**. So that they think it was a success?

Mr. **Sheldon**. Yes.

Senator **Cannon**. Thank you, Mr. Chairman.

Senator **Danforth**. Senator Long.

Senator **Long**. No questions, Mr. Chairman.

Senator **Danforth**. Thank you very much.

Mr. **Sheldon**. Mr. Chairman, thank you.

[The statement follows:]

STATEMENT OF GEORGE SHELDON, FLORIDA STATE REPRESENTATIVE

Henry Browning thought he had a good idea. Many of his friends and neighbors were state workers who commuted from Perry to the State Capital in Tallahassee, even though it meant a 100-mile, two-hour round trip daily.

Henry Browing through that if he bought a couple of vans be could start a little bus service. He though he could save his neighbors gas money, aggravation from that long drive and make a little money for himself.

So in early 1980, Mr. Browning bought two vans.

But be forgot to think about the Public Service Commission. He didn't know he had to get its permission for his bus service.

Informed that he needed to get an operating certificate, Mr. Browning filed his application and paid the $500 fee. It hurt to pay that kind of fee. But if that was what it took to get started, all right.

Now that he had complied with the application requirements, where was his certification.

It was stalled. Two bus companies had contested his application. Although both bus companies served the Perry to Tallahassee run, neither ran at times convenient to the daily communters that Mr. Browning hoped to serve. He offered them no real competition. Except that Mr. Browning proposed to charge about half what the two bus companies did.

Mr. Browning had to hire a lawyer, spend a lot of money and wait several months. Then, he found that he was restricted to carrying only daily commuters

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going to full-time jobs. Anyone wanting to go shopping or to visit a doctor or relatives in Tallahassee could not ride in one of Mr. Browing's vans.

Mr. Browning's modest odyssey through the twisted channels of the regulatory process was only one of scores of problems—unnecessary problems—that we, in Florida, uncovered during our review of surface transportation regulations last year.

Until the Florida Legislature terminated transportation regulation in 1980, the state had controlled entry into the market, rates and restricted operation for half a century.

The application process alone could entail up to 78 separate procedural steps. As in the case of Mr. Browning, an application was open to challenge by bus operators already in business. Challenges were used to limit competition, to exclude potential competitors or to restrict their operation so that they were no longer an economic threat.

These challenges and the long drawn out application process made geting a certificate expensive and time consuming. One applicant in central Florida went through 44 hours of hearings and spend $30,000 in legal and accounting fees. He ended up with a route eight miles long. At $3,700 a mile, that's an expensive eight miles.

Even when an applicant survived the application process, he often found that his operating authority was bound in ways he had not expected.

For example, one south Florida carrier was prohibited from using buses equipped with air conditioning, reclining seats or restrooms.

Another carrier could use only two buses at one time and could not advertise its schedules.

A third carrier was allowed to run from Quincy to Chattahoochee or Tallahassee, but not between Chattahoochee and Tallahassee.

A fourth carrier was allowed to carry passengers from Punta Gorda to Fort Myers, but could not pick up or drop anyone off between those two points.

These are only few examples of many instances where regulation had a bizarre impact totally unrelated to protecting the public.

Wrapped in such an all embracing blanket of regulation, the industry was shielded from market forces and was unable to respond flexibly to changes in demand.

One area of the industry in Florida that desperately called for flexibility was charter bus service. We have nearly 30 million tourists a year in Florida; half of them do not bring their own cars with them. They are dependent on whatever mass transit we can provide.

Charter bus operators reported that charter service was so unsatisfactory that the tourist industry was threatened. Major attractions reported that the scarcity of charter buses prevented thousands of people from visiting them.

Senior citizens also are heavily dependent on charter service. They told us that for lack of available buses, many seniors could not even organize a trip to the movies.

This scarcity of buses was caused by the fact that to operate a charter service, a bus company had to run regular routes. It could not simply operate charters. This significantly restricted the number of companies capable of running charters.

The high costs of entry into the market and the fact an operator was protected once he got there combined to drive through the roof the price people would pay for an existing operating certificate.

For example, a package of charter bus routes in central Florida sold for a whopping quarter million dollars.

One single 18-mile route from Miami to Hollywood sold in 1977 for $200,000—or $11,000 a mile.

From all this the Legislature could only conclude that regulation was not serving the public as much as serving existing bus operators. The state was holding a protectionist umbrella over the industry, guaranteeing a monopoly to those already in the market and ensuring their well-being.

For the most part, the industry argued that regulation was the only dam between the state's economy and transportaton chaos. It confidently expected that total disarray would be the result of deregulation.

The industry predicted that a horde of untested operators, unsafe and unreliable fly-by-nights, would glut the market and abuse the public.

The industry predicted cut-throat competition among current operators who would battle ruthlessly for the most lucrative markets.

The industry predicted that bus companies would abandon small rural communities in their rush to capture more profitable urban routes.

But none of these predictions came to pass.

While there was some minor dislocation at first—which we anticipated—the market has forced a readjustment that is favorable.

With the expiration of entry controls, a large number of small operators have entered the market. But these so-called "gypsies" have not proved to be unsafe, unreliable or irresponsible. Competition, especially among charter bus services, has increased tremendously, but it is not the kind of cut-throat competition predicted before deregulation.

Some major carriers did in fact discontinue service to small towns and rural communities, but this has proven to be more of an inconvenience than a hardship for passengers. Regular route service generally is available within 9-11 miles of these towns, or small van services are coming into the market to handle demand where it exists.

Two federal studies, one by the ICC and the other by the U.S. Department of Transportation, have documented how deregulation has brought on increased competition. That competition has resulted in more flexible service and prices for consumers.

Let's look at what has happened with companies offering regular route service, such as Greyhound and Trailways.

Following deregulation both companies changed their routes extensively. Trailways dropped service to eight small towns, most of them in the Florida Panhandle, and picked up 10 others in the central part of the state.

It concentrated on express service between the larger cities, cutting travel time substantially, yet overall, it added 7.5 percent more miles to its scheduled routes.

Greyhound did much the same, dropping some small towns and adding eight percent more mileage to its scheduled routes.

Both Trailways and Greyhound have loosened up their rates. Greyhound, for example, now offers an array of discounts to encourage ridership such as one for senior citizens.

One of our major concerns was the potential loss of regular bus service to small towns once carriers' certificates no longer required them to go there.

Our experience so far has been that this is not as significant a problem as we originally feared. The DOT study concluded that the loss of a major carrier to a small town was mainly an inconvenience. DOT looked at nine small North Florida towns that lost direct service after deregulation and found that each of them within nine to 21 miles of a Greyhound or Trailways route. Passengers were the most inconvenienced. Package service apparently has not suffered, since things once carried by bus now go by United Parcel Service.

The major carriers curtailed service in small towns because there was not enough consumer demand to justify the operating costs. For example, the operator of a charter bus line in the small town of Palatka, south of Jacksonville, told a DOT investigator that people there hardly noticed cutbacks in regular bus service because they weren't "bus oriented".

Many of these smaller towns that need regular bus service are finding it from small van companies like that of Mr. Browning.

Yet major carriers are not entirely unwilling to do business in small towns. After deregulation, Greyhound discontinued service to Jasper, a town of 2,200 people south of the Georgia line between Jacksonville and Tallahassee. The people of Jasper petitioned Trailways to come in and the company did.

Greyhound now maintains "flag stops", in some small towns now, such as Silver Springs outside Ocala, and passengers can wait at designated points and wave down a bus as it passes.

In Florida, we have remained sensitive to the concerns of the small towns. Had there been a real problem in them after deregulation, the state Legislature would have heard of it. Yet there has been no public outcry, no call for a return to regulation.

Deregulation has brought about increased efficiency and competition over regular bus routes, but it has had its most dramatic impact in the charter service area.

Charter bus service is undergoing an unprecedented expansion. New firms are proliferating: since deregulation the number of charter services has increased almost eight times, from 25 companies (only three with statewide operating authority) to between 150-200. Because there are no restrictions on entering the market, it is hard to keep a count of all the new companies and solo operators coming into the field.

Easy entry has not proven harmful. Instead, it has boosted competition and benefited consumers by providing flexible services at lower rates. Let me give you some examples of route flexibility. Between Gainesville and Tallahassee, there is a small state park called Ichetucknee Springs. It has a spring and a three-mile run that people come from miles around to enjoy. One of the things they do is float with the current down the run on inner tubes until they reach the end of the park at a highway bridge. Until deregulation, people had to take two cars, leaving one at the bridge and driving the other to the spring head. But since deregulation, a number of van owners have appeared at the bridge to carry people on the five mile roundabout trip by road back to the spring, where they left their cars, doing away with the need to bring two cars. In the long run, this is more convenient, and saves people money and gasoline.

In another example, during our legislative hearings before deregulation, senior citizen groups testified that older people dependent on mass transit had tremendous difficulty getting charter transportation. They had trouble even organizing trips to the movies. A spokeswoman for a senior citizens group told me recently that charter buses are now readily available and at a lower cost.

It is now easier for large groups to plan trips well in advance, first because there are now more buses, and second, they no longer need to know exactly how many buses to reserve. In the past it had been necessary to know, otherwise groups could lose a substantial deposit when they canceled the need for a bus.

We have seen a great deal of pricing flexibility in the charter market, too. For instance, the cost of a 50-passenger charter from Orlando to the attraction Busch Gardens in Tampa, about a two-hour trip one way, fell from $350 to about $295.

With the removal of route restrictions on charters, they are now free to go anywhere in the state. This means that tour groups can go all over Florida on the same carrier. Before they had to switch carriers when they passed out of one's territory.

The main beneficiaries of the expansion of charter bus service have been Florida's tourists. Many Latin Americans and Europeans arriving in Miami and Orlando, for example, are helpless without some kind of mass transit. Tour operators specializing in serving foreign tourists now are able to provide their own transportation and are no longer at the mercy of a regulated and restricted supply of buses. Hotels and motels also are now providing their own transportation services from airports at a reduced cost to the traveler.

The Florida Hotel and Motel Association is a strong advocate of deregulation. So is the Florida Attraction Association, which has such members as Disney World, Busch Gardens, Sea World and Cypress Gardens.

Altogether, the public is responding positively to deregulation. A survey by the Florida Chamber of Commerce found that the public favored deregulation by five to one.

From all of this, I can confidently say that deregulation of the bus industry has benefited the public far more than regulation ever did. We have seen increased service, reduced prices and enhanced business environment caused by the entry of small businessmen into a once restricted market.

Service is gradually becoming available to the smaller towns that lost it after deregulation. Those routes that are profitable eventually will have service.

To impose the entire panoply of rate, route and market-entry regulation merely to ensure service to the four or five routes in a state that are unprofitable brings on a cure worse than the disease.

Moreover, lifting restrictions on the size of packages buses can carry provides further incentive for companies to continue serving small towns.

I see no reason for Congress to half-way deregulate bus operators as it did the trucking industry. Even half-regulation imposes costs on the public and burdens on the industry that are not justified when measured against the benefits of full deregulation.

The same kind of total phase-out used for airlines is suitable for the bus industry.

Should you decide to fully deregulate, with I urge you to do, please consider the impact on the industry from 49 state regulatory programs. For deregulation to be completely effective, federal deregulation must be accompanied by state deregulation.

Otherwise the busing industry will face continued regulation from the states that will be conflicting and burdensome. We faced a similar situation in Florida. Our local governments proceeded to enact licensure and route restrictions after state deregulation, so the state found it necessary to preempt their power to do so.

The Florida experience has shown that deregulation of the bus industry can work to the public benefit without harming industry. If it can work in Florida, it can work throughout the country. The conditions in Florida are not so different from those elsewhere to make the state experience a fluke. Florida is a microcosm of the United States. We have sprawling urban areas isolated from each other by wide expanses of farmland, dotted with small towns and rural communities. Florida is not a small state. It takes longer to drive from the state capital of Tallahassee to Miami than it does to drive from Boston to Washington, D.C. If bus deregulation can work to Florida's advantage, it can repeat the experience in other areas, like the nation's northeast.

We have discovered the government is a very poor allocator of market resources. It's intrusion into the marketplace should be limited to only extreme situations and should come only as a last resort. The interstate bus system is not such a situation.

The federal government, by your action, can set an example for the rest of the country and free the bus industry from needless government regulation.

We should give the Henry Brownings of the nation and their customers a break. We will all be the better for it.

Senator DANFORTH. The next witness is Norman Sherlock, president of the American Bus Association.

STATEMENT OF NORMAN R. SHERLOCK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN BUS ASSOCIATION, ACCOMPANIED BY CHARLES WEBB, LEGAL COUNSEL; WILLIAM B. GROSSMAN, PRESIDENT, NATIONAL TOUR BROKERS ASSOCIATION; WAYNE SMITH, EXECUTIVE DIRECTOR, UNITED BUS OWNERS ASSOCIATION; AND JOHN A. GRADY, PRESIDENT, BUS TRAFFIC ASSOCIATION

Mr. SHERLOCK. Good morning. Thank you, Mr. Chairman and members of the committee. I am Norman Sherlock of the American Bus Association, accompanied by our legal counsel, Charles Webb.

Seated with me is Wayne Smith, executive director of the United Bus Owners of America, and Bill Grossman, president of the National Tour Brokers Association, and John Grady, president of the National Bus Traffic Association.

Seated behind me are four representatives of small bus companies: Mr. Robert Basse of VIP Stagecoaches in Missouri, E. L. Hotard of Hotard Coaches in Louisiana, Lowell Hansen of Jack Rabbit Lines in South Dakota, and Frank Mikulich of the Las Vegas-Tonopah-Reno Line in Nevada.

All of these people have traveled to Washington to express support for H.R. 3663. Regulatory reform is needed to modernize the law under which the bus industry has operated for nearly 50 years. We are in a bind today, reaping all of the disadvantages, and very few of the advantages, of regulation. Irresponsible regulation has weakened the bus industry financially and prevents it from adding and improving its service to the public.

We have been particularly hard-hit in two areas: First, discriminatory and arbitrary State regulation has devastated regular route bus service. States have forced bus operators to maintain financially unsound routes and schedules. Many States will not allow bus operators to charge the rates needed to justify the service. As a consequence, the public also suffers.

Bus operators, hamstrung by losses related to this kind of regulation, cannot sensibly assume the risks of adding service, fearful that they may have to maintain it indefinitely regardless of the ridership.

Second, incredible regulatory lag in rate adjustments have prevented the bus industry from earning the capital it needs to improve facilities and purchase new equipment. Rate increases which were denied by the ICC between 1973 and 1978 alone totaled $110 million. A 1-percent increase denied daily can cost the industry around $18,000 a day.

The problem of lag in relationship to inflation compounds the situation. No wonder we are playing catchup. Once again, not only our industry but the public, the traveling public, have been critically compromised.

H.R. 3663 is a thoughtful and a comprehensive response to the problems I have just explained. And I am pleased to tell you that all sizes and types of bus operators are firmly united behind this legislation. Our unified position is the product of 3 years of intensive debate, deliberation, and analysis.

While this bill meets the industry's needs, it is clearly responsive to the public need for a more competitive environment which can be expected to yield greater market choices in routes, rates, schedules, and quality of service.

Let me address briefly how H.R. 3663 resolves the first problem I noted, the burden of discriminatory State regulation. The bill more closely alines the relationship of State and Federal regulatory practice. It gives the ICC the authority to act on appeal in two areas: First, to determine whether or not financially unsound service constitutes an undue burden on interstate commerce; second, to determine whether or not continuation is in the public interest.

At the same time, H.R. 3663 assures a continuing role of the States by reserving the right of initial review and decisionmaking. This alinement can also cure the problem of discriminatory State rate regulation.

It seems appropriate to discuss more pointedly now the safeguards for small-community service in H.R. 3663. In this process, the bill requires the ICC to give special consideration to last-bus service in a community. No service can be terminated abruptly; rather, public hearings and notice are required. And if termination is advised, it cannot be put in effect immediately. In fact, a provision of the bill provides for continuation of up to 300 days.

At the same time, I would like to make sure you understand the bill makes it easier for small communities to secure or expand bus service. The bill minimizes the loss of service, whereas total deregulation, as some are proposing, certainly increases the likelihood of wholesale abandonment.

In terms of the second problem I mentioned earlier, ratemaking, H.R. 3663 gives bus operators the freedom to act independently and quickly to meet competition and to recoup inflationary costs. At the same time, collective action on joint-line rates and general-fare increases, as well as interline arrangements, are continued.

This responds to the need for bus operators to act together in order that passengers can be sold a ticket in advance at a known price and can travel throughout the country with convenience on different carriers. Smaller bus operators particularly feel that they would be lost without the rate bureau and the ability to interline.

Viewed broadly, H.R. 3663 achieves very substantial deregulation. It puts the bus industry in a much more competitive environment in three ways: First, liberalization of entry is achieved, making it easier for people to go into the business or expand their service. The means of doing away with protective closed-door restrictions is provided.

Second, the scope of antitrust immunity for collective ratemaking is narrowed. The process is open to public scrutiny.

And third, the bill comes to grips, at least in a minimum way, with the problem of discriminatory State regulation.

Now that I have analyzed the highlights of this bill solely on its merits to the industry and to the public, let me turn candidly to the issue of how it measures up in the world of practical politics.

Mr. Chairman, members of the committee, it is doable. There is a firm consensus behind this legislation, and it is not only within the bus industry. Strong editorial support has been expressed throughout the country. And I have these, which I would like to file for the record. They include the New York Times, the Chicago Tribune, the Portland Oregonian, the Rapid City Journal. And recently, I understand, the St. Louis Post-Dispatch has called for action as well.[1]

Surely, when newspapers of such widely differing philosophies conclude that H.R. 3663 is a good bill, the stage is clearly set for action. The strong consensus behind H.R. 3663 provides you with a great opportunity to achieve regulatory reform of the bus industry quickly, without marathon sessions, and without great public controversy.

We hope that you will act. Thank you.

Senator DANFORTH. Thank you very much, Mr. Sherlock. In your view, are the people of Rolla better off if the bill is passed than if the bill is not passed?

Mr. SHERLOCK. I am not specifically acquainted with that community, but I most certainly would say that they would be. The way this bill sits today, there are safeguards for service to small communities. And I would think that there may be improvements in service at various points.

Senator DANFORTH. Are the fitness standards under H.R. 3663 not stiffer and do they not include more factors than is the case today?

Mr. SHERLOCK. H.R. 3663 involves considerably less regulatory restraint than current law, or S. 926, which the industry originally proposed.

Whatever factors are to be considered in the ICC arriving at a decision, the fundamental premise underlying the legislation is that there will be eased entry. And that is made clear in the House report.

I would also like to point out that, No. 1, the old standards of P. C. & N. will be dropped. They will no longer apply. The assumption inherent in the legislation is that added service is in the public interest. The burden of proof is on the protestant, making it more difficult to stop applications. There will no longer be any need for evidence of public support, such as lists of people signing.

And I would like to also reiterate what I said before; that is, that it provides a way and means of doing away with the closed door restrictions.

Senator DANFORTH. You disagree with the administration's position on antitrust immunity; is that correct?

Mr. SHERLOCK. Yes. And at this point I would like to ask Mr. Grady, who heads the rate bureau, if he would like to comment on that.

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[1] The material referred to has been retained in the committee files.

Mr. **Grady**. I think, Senator, that if the bureau is gone, the people in Missouri are going to be hurt because the agent is not going to be there to sell them a ticket because he does not know how to price the ticket. And absent the rate bureau, you would be involved in price leadership, and you would have carrier A come out with a price X and carrier B come out with X-plus. And it is possible to have 350 days of actual changes in rates. So absent the rate bureau——

Senator **Danforth**. Now, Mr. Sherlock, your view is that the House bill should be passed as is; is that right?

Mr. **Sherlock**. We would support that action, yes, sir.

Senator **Danforth**. Senator Pressler.

Senator **Pressler**. I would like to address my questions to Lowell Hansen, the president of Jack Rabbit Lines, and also Lieutenant Governor of our State of South Dakota, I would like to know if Lowell could come up. He is part of your panel, I think. He is sitting back there. Could he get to a microphone?

Lowell, our State of South Dakota is in a somewhat unusual situation regarding bus service. The two major operators, Greyhound and Trailways, are providing only a very small portion of our State service. As a result, the small carriers are critically important to South Dakota's bus transportation. Would you please comment on the specific effects of this bill on South Dakota's particular situation, with emphasis on what it is going to do to small towns?

Mr. **Hansen**. Thank you, Senator. I appreciate being asked to be here. I could not help but notice, Senator Danforth, having been a legislator in South Dakota for a few years, the twinkle in your eye as Norman Sherlock introduced the four small bus operators who are here. And I certainly noted that it did not pass you by, that every one of them represents a constituent of one of the members of the panel.

Senator **Danforth**. I thought it was just the luck of the draw.

Mr. **Hansen**. I would speak as a small bus operator from South Dakota, but I submit to you that my comments could be made by any small bus operator from any of the States in the United States. And we have three additional small bus operators here.

We support, as small bus operators, H.R. 3663 because we think that it provides a balance between entry and exit.

And, Senator Cannon, I do not think that your question on why exit has not been a problem was properly answered. The reason that exit has not been a problem for the ICC is that each individual State has regulated exit. And if H.R. 3663 were passed, exit would be easier, although we would still be required to demonstrate that there is a need to exit.

I do not support, nor do I think the small bus operators in general would support, the position of Secretary Lewis to completely deregulate entry without completely deregulating exit. You cannot have a balanced system on the one hand by allowing anybody into the business but by keeping those that are already in the business on unprofitable runs.

And specifically, Senator Pressler, on the question of how this bill or the administration's position on entry and exit would affect South Dakota, I can tell you that we have runs in South Dakota now—and, I would submit, in Nevada and in Louisiana and in Missouri—that are cross-subsidized.

We are losing money in South Dakota on a run between Aberdeen, specifically between Aberdeen and Mobridge, between Redfield and Gettysburg. On the other hand, we are making money in South Dakota on a run between Sioux Falls and Rapid City and Sioux Falls and Fargo.

If we completely deregulate entry, then the large carrier, Greyhound Lines, which I connect with in Sioux Falls, would be free to go across my profitable run and would, in fact, go across my profitable run between Sioux Falls and Fargo and Sioux Falls and Rapid City, but they will not go between Aberdeen and Mobridge and between Redfield and Gettysburg.

I will, only in order to survive, I will have to abandon them. And there will be no small bus operator come forward and take that service in those communities, because we have tried for years to get any operator to take that run, and nobody wants it.

Senator **Pressler**. Now, that would happen under the administration's proposal, which is the total deregulation of entry. Am I stating the administration's proposal correctly?

Mr. **Hansen**. That is correct.

Senator **Pressler**. The big lines would take the profitable Sioux Falls to Rapid City run and the Sioux Falls to Fargo run without helping out on the less profitable runs. Is that your point?

Mr. **Hansen**. Exactly.

Senator **Pressler**. Now, could you comment further on the administration proposals and this bill's proposals as they will affect South Dakota concerning the entry process, exit procedures, phaseout of ratemaking, antitrust immunity, and other things that seem to be of importance in South Dakota?

Mr. **Hansen**. Well, I think that this bill, as it passed the House, is a workable bill. It is a compromise between small and large bus operators.

But I think more importantly than that, it protects the people of your States: it will continue to provide service in the small rural areas which are really getting service now by small bus operators and in many cases, even in my case, at a loss. But I am able to cross-subsidize now between my profitable and my losing runs, and I do not intend to abandon service between Aberdeen and Mobridge and Redfield and Gettysburg.

Senator **Pressler**. How many passengers a day would you have between Aberdeen and Mobridge, for example?

Mr. **Hansen**. Twelve, on the average.

Senator **Pressler**. How much would they pay for that ride?

Mr. **Hansen**. It averages about 6 cents a mile. I could not help but note the comment that was made by, I think it was, Secretary Lewis that he has not priced a bus recently. And by the way. it is now $149,000 and not $132,000. But if you take a bus that is $149,000 and pay with fringe benefits an employee $30,000 a year, you are not going to run that run because I do not even gross $30,000 a year on that run.

Senator **Pressler**. Do you have any demographics on your riders? Are they different in your runs, let us say, between Sioux Falls and Rapid City, which is a profitable run, and your run between Redfield and Aberdeen, or Aberdeen-Mobridge? Are they elderly people? Are they young people? Do you have any demographics on that?

Mr. HANSEN. Senator, only in the summertime is there a basic change in South Dakota, people traveling to our great State to see Mount Rushmore. Tourism paid my way here.

And so we do see younger people primarily from outside the United States coming through on the buses.

Senator PRESSLER. Foreign tourists?

Mr. HANSEN. Yes.

Senator PRESSLER. But in the wintertime your regular routes have been Mobridge and Redfield. Who rides the bus up there?

Mr. HANSEN. I think they have been described here by Chairman Taylor as elderly, generally, middle-income to low-income individuals. And I would subscribe to that. I think he is correct.

Senator PRESSLER. And the cost of their ticket is about 6 cents a mile?

Mr. HANSEN. On the average, depending on how far they travel.

Senator PRESSLER. Thank you.

Senator DANFORTH. Senator Cannon.

Senator CANNON. Why do you not oversimplify this for me and tell me just what it is you could do under this legislation that you cannot do now, that you would like about it?

Mr. HANSEN. Well, I think, first of all, it will allow us to go into a market and experiment. I right now have thought about going into an area and apply for an emergency authority. But I am afraid that if I do, the Interstate Commerce Commission is going to force me to stay on it.

And yet, I need a trial basis to go in and see if there is enough market there to justify a long-term operation. Specifically, the runs I am looking at are Sioux Falls to St. Cloud, Minn.

But I am afraid, under the present law, to apply for fear that I will get on that run and the people in that community will then become used to the service, will apply to the ICC, and ask me to stay on. And yet, under this proposed legislation, that ETA, emergency temporary authority, would actually just be that; it would be a temporary authority where I could expand into a market that I am presently not serving.

I would say also—and this is one of the dangers to the bill—but operators now are preempted by State public service commissions from exiting routes. As I mentioned to you before, under this bill I could apply to abandon service between Aberdeen and Mobridge and between Redfield and Gettsburg, specifically, in my area.

I have already said that I do not intend to do that, but I could if this legislation was passed. But the people in that community and the public service commission could come to the Interstate Commerce Commission and protest my exit. And there is the protection that I think you are looking for for the small rural communities in Nevada or Missouri or South Dakota.

Senator CANNON. Now, Mr. Sherlock, you suggested in your statement that complete deregulation of entry into the intercity bus industry is advocated by the administration and the ICC would result in a substantial number of small communities losing service.

How do you reconcile that with the testimony that Mr. Sheldon gave us from the Florida House of Representatives?

Mr. SHERLOCK. Well, I think Mr. Sheldon told you that he considers Florida to be unique in its geography.

Senator CANNON. Well, I am sure we all consider all of our States to be unique.

Mr. SHERLOCK. It occurs to me, as I have heard the small-carrier presentation this morning by Mr. Hansen and in talking to small carriers throughout the country, that this legislation is going to make it easier for small carriers to enter new markets and service.

It is also going to make it easier for large carriers to do the same. And it is going to make it easier for people outside this business to get into the markets that are producing the profits for small carriers today. With total deregulation, you are talking about opening up the floodgates.

To the extent that small carriers are today in communities, they are going to be disadvantaged by the fact that they have to maintain service even under the exit provisions of this bill. Much of their service could be required to continue.

I do not think you are going to know what is going to happen in total deregulation in every State until you have it. But I would suggest that by the time you have it and if you do it in quick, wholesale fashion, you may be sorry you have it.

Senator CANNON. Your testimony and what you are saying now criticizes the ICC then for making entry too easy. Now, I understand that argument. But what about the rest of economic regulation? If the ICC has relinquished its role as a regulator of prices and exit, how would you suggest the ICC reimpose those controls, and to what extent?

Mr. SHERLOCK. Well, I guess what we are talking about is a definitive congressional mandate to tell the ICC what to do. We believe our regulatory fate should be decided by what the Congress determines is in the public interest and the industry.

Most of what we have talked about has decidedly come down on the side of more freedom. You can ask the question at some point as to whether there is a legitimate role for continuing regulation, but there certainly is in the immediate future, to monitor certain things and to assure some of the factors of the legislation are carried out.

At this juncture, it seems to us the freedom inherent in the legislation—however, without requiring us to go back to the ICC for everything and go through long, time-consuming delays—means that we are going to have the freedom to provide better service, to get the capital we need to provide better terminals and better equipment and add levels of service throughout the country for your constituents.

Senator CANNON. It sounds to me like what you are really arguing for is a reinstitution of regulation. In a section of your testimony after you criticized the Commission for relinquishing its role as a regulator, you have a section entitled "restoration of regulation under congressional standards."

And that ends with the following statement: "Since the Commission seems determined to advance toward total deregulation of the intercity bus industry, H.R. 3663 is required to insure the degree of regulated competition desired by the Congress."

I could hardly believe my eyes when I read that, "restoration of regulation." The House bill is needed to prevent deregulation? Is that what you are saying?

Mr. **Sherlock**. We may have phrased it badly. We are talking about a reformation of regulation. Clearly we are not asking for regulatory reform that imposes significantly higher or more conservative standards, which would prevent people from coming into business or charging the kind of rates that are needed to maintain a financially viable service.

Senator **Cannon**. My time is up. Thank you, Mr. Chairman.

Senator **Danforth**. Senator Long?

Senator **Long**. No questions.

Senator **Danforth**. Senator Pressler?

Senator **Pressler**. What would happen if we do not pass this bill and we just do nothing, if we maintain the status quo?

Mr. **Sherlock**. I think what you are going to see is a progressive deterioration of the intercity bus industry. We are already in a bind today, as I told you. We are getting the disadvantages and none of the advantages of regulation. At the same time we are confronted in every community in this country, practically, with some form of competition from someone else.

The Congress has given very high quantities of subsidy to other forms of transportation, and as a consequence we must meet that daily. There cannot help but be a progressive deterioration of carriers in the business who have to compete with those kinds of subsidized competitors.

Senator **Pressler**. Lieutenant Governor Hansen, what will happen in South Dakota if we do not pass this legislation?

Mr. **Hansen**. Well, I think that Mr. Sherlock has stated the industry—has accurately reflected the industry statistics as it relates to the intercity bus market. We have steadily, even in South Dakota, seen a deterioration in our profit picture over the last decade, as the industry has seen. And like it or not, if we continue with the type of regulation that we have now I think you are going to see routes even abandoned in South Dakota by necessity.

Senator **Pressler**. Thank you, Mr. Chairman.

Senator **Danforth**. Gentlemen, thank you very much.

Senator **Cannon**. I have another question.

Senator **Danforth**. Senator Cannon.

Senator **Cannon**. It was not lost on me either that one of my constituents is present here today, Mr. Frank Mikulich, an old friend of mine, here to support Norm Sherlock's testimony. And I would like to ask, first, if you have anything to add, Frank, to anything that has been said here.

Mr. **Mikulich**. No. I concur 100 percent in what Mr. Hansen has said and what Mr. Sherlock has said.

Senator **Cannon**. Why do you not just trade places here with this gentleman here.

Mr. **Mikulich**. Senator, it is good to see you again.

In response to your question, I do concur 100 percent with Mr. Sherlock's statement and Mr. Hansen's. And being a small carrier in a small State, we do have areas where there is an abundance of business, we have areas that it is no business at all. There is a kind of a cross-subsidy in that sense.

Senator CANNON. I just have been examining the copy of your certificate here and found it quite interesting. I see that you have operating authority "between Tonapah, Nev., and Winnemucca, Nev., from Tonapah over U.S. Highway 6 to junction, Nevada Highway 8A, and then over Nevada Highway 8A to its junction with Nevada Highway 69, then over Nevada Highway 69 to Manhattan, then over Nevada Highway 69 to its junction with Nevada Highway 8A, then over Nevada Highway 8A to its junction with Nevada Highway 70, and then over Nevada Highway 70 to Round Mountain, then over Nevada Highway 70 to its junction with Nevada Highway 8A, then over Nevada Highway 8A via Austin to Battle Mountain, and then over U.S. Highway 40 to Winnemucca."

Well, that is a pretty involved and complicated system. Do you actually operate over that route now?

Mr. MIKULICH. Currently, no.

Senator CANNON. Did you ever operate that route?

Mr. MIKULICH. Yes, we did.

Senator CANNON. How did you manage to get out of serving that rather complicated route structure?

Mr. MIKULICH. How did——

Senator CANNON. Did you just quit?

Mr. MIKULICH. Yes.

Senator CANNON. On that route between Tonapah and Winnemucca or on any of your other small community routes, is there any public interest served by the Federal Government telling you exactly which highway your bus has to drive down and exactly where it has to turn off?

Mr. MIKULICH. When you file an application you are designating what routes you are going to follow or what territories you are going to serve, what communities you are going to serve. That is in the application.

After the certificate is issued, on a new highway or a faster highway there are no conditions.

Senator CANNON. Would that kind of structure be eliminated in this House bill as you see it here now?

Mr. MIKULICH. Are you saying with the new bill?

Senator CANNON. Would it be less complicated?

Mr. MIKULICH. There would be no highway designation.

Senator CANNON. I also note that between Tonapah and Winnemucca your certificate says that you can carry newspapers, but only between Austin and Battle Mountain. You cannot carry newspapers between Tonapah and Round Mountain or, for that matter, btween Winnemucca and Battle Mountain.

Where do those restrictions come from and do they make any sense?

Mr. MIKULICH. Well, those restrictions, at the time that restriction was conceived—and we had to honor it—there were other operators, either mail contractors or freight operators or whomever, that had some authority to move that merchandise.

Senator CANNON. Now, on your route between Boulder City and Las Vegas, your certificate precludes you from picking up any passengers between Las Vegas and Henderson.

Mr. MIKULICH. Well, that is incorrect. We filed some time ago, and as a matter of fact the restriction at that time was on the strength of Southern Nevada Transportation Co.—Mr. Walsinger was the owner at that time—was performing a transit-type service between Las Vegas and Henderson and between Las Vegas and McCarron Airport.

Senator CANNON. So that restriction is off?

Mr. MIKULICH. It has been lifted, yes, both intra- and interstate.

Senator CANNON. And you support H.R. 3663 as it is over here to us now?

Mr. MIKULICH. As it was passed by the House, yes.

Senator CANNON. What about the amendments that the administration has proposed? Maybe I should ask Mr. SHERLOCK. What is the position of the industry on those amendments specifically?

Mr. SHERLOCK. We think the bill should be passed as it came over from the House.

Senator CANNON. Without the administration's amendments?

Mr. SHERLOCK. That is right. We do not see any need unless the committee would choose to have perfecting language like changing X number of days to X number of days. But the basic structure of the bill and its primary provisions need to be maintained. It is a very delicate and a very thoughtful balance of all of the elements of regulation.

Senator CANNON. Now, you heard Mr. Lewis here this morning. Do you think there is a danger that the President would not sign that bill if it is passed without the administration's recommended amendments?

Mr. SHERLOCK. Well, of course I cannot tell for sure, but I would hope that the President would recognize over the time that the Senate considers this legislation and it goes to conference or it does not go to conference, that it is in fact a balance of elements that on the whole protects the public interest better than total deregulation would.

Senator CANNON. Well, let me ask you, if the Secretary of Transportation is right and the President would not sign the bill as it came over from the House, would you rather have no bill or would you rather have the bill as it came over with the administration's amendments?

Mr. SHERLOCK. We would rather have this bill and choose our alternatives behind that, obviously.

Senator CANNON. You did not answer my question. My question is. If you got the alternative of having a bill with the administration's amendments or no bill, which would you prefer?

Mr. SHERLOCK. I think it would be nip and tuck. I think the smaller carriers across the country could very easily come unglued with that kind of action.

Senator CANNON. Well, do you want us to just flip a coin to decide which way we go in that case?

Mr. SHERLOCK. I would like you to pass the bill and then support whatever action is needed to override.

Senator CANNON. Thank you, Mr. Chairman.

Senator Danforth. Thank you very much.

Gentlemen, thank you very much.

Mr. Sherlock. Thank you, Mr. Chairman.

[The statements follow:]

Statement of Norman R. Sherlock, President and Chief Executive Officer, American Bus Association

Mr. Chairman and members of the subcommittee, my name is Norman R. Sherlock. I am President and Chief Executive Officer of the American Bus Association ("ABA"), the national trade association for the intercity bus industry.

At latest count, ABA had 638 operator members who provide more than 90 percent of the intercity bus transportation in the United States. We are an integral part of the travel and tourism industry and have 1,420 associate members from that industry.

Mr. Chairman, the bus industry is most appreciative of your interest and the interest of Subcommittee members in bus regulatory reform legislation. Accompanying me today are several bus operators who are representative of the smaller carriers in our industry. They are Frank S. Mikulich, Vice President, Las Vegas-Tonopah-Reno Stage Line, Inc., from Las Vegas, Nevada; Eva Hotard, President, Hotard Coaches, Inc., from New Orleans, Louisiana; Bob Basse, President, V.I.P. Stage Coaches, from Kansas City, Missouri; and Lowell C. Hansen II, President, Jack Rabbit Lines, Inc., from Sioux Falls, South Dakota. To save time, they do not plan to testify today, but they all support the regulatory reform legislation, H.R. 3663, the Bus Regulatory Reform Act of 1981, passed in the House of Representatives, and are willing to answer any questions the committee members may wish to ask them. Later, representatives of the two nationally organized carriers, Greyhound and Trailways, and Daniel F. Prins, President, Jefferson Lines, Inc., from Minneapolis, Minnesota, representative of middle-sized carriers, will testify separately. Also appearing with me today is Wayne Smith, Executive Director, United Bus Owners of America. Mr. Smith will make a brief statement at the end of my presentation. Mr. John Grady, President of the National Bus Traffic Association, the industry's rate bureau, will testify later on fare flexibility, rate bureaus and rate setting matters in the bill.

I have prepared a statement with supporting appendices[1] which I ask be made a part of the record.

Mr. Chairman, this hearing involves truly landmark legislation for the intercity bus industry. It is the first time in 46 years that Congress has addressed the underlying philosophy governing the economy regulation of the intercity bus industry. Most importantly, it is the first time ever that Congress has addressed the unique characteristics of motor carriers of passengers as compared to motor carriers of freight, even though these are radically different industries.

The Board of Directors of the American Bus Association has been working for over three years to attempt to develop an industry position on reform of economic regulatin of this industry. The Board is composed of a representative cross section of the carriers in the industry ranging from the very large to the very small, from those that are highly profitable to those that are losing money, from those primarily engaged in regular route scheduled operations to those that are exclusively charter.

After many meeting, much discussion, and many sharp arguments, the Board was finally able to reach a unanimous decision for proposed legislation. Senate bill S. 926 introduced by Senator Cannon reflects this industry position.

Since that date, the House of Representatives has passed its reform bill, H.R. 3663, and the industry is now unified in support of that legislation. There are only some minor technical perfecting amendments which need to be considered.

It is impossible to deal effectively with regulatory reform legislation for bus passenger transportation without understanding clearly its structure, its modes of operation, its unique growth characteristics and its financial position.

First, besides the two nationally organized carriers with which most people are familiar, Greyhound and Trailways, there are approximately 1,200 other companies engaged in intercity bus service. They serve more than 15,000 communities over 280,000 miles of route. Over 14,000 of these communities are served directly only by the intercity bus industry. Approximately 750 of these companies are certificated by the Interstate Commerce Commission to perform interstate services. The remainder have authority to operate only intrastate. Of the licensed ICC carriers, approximately 350 have authority to provide regular route services as well as charters and special services. The remainder have authority only for charter and special operations.

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[1] The appendices have been retained in the committee files.

Second, the intercity bus industry is comprised of two distinctly different types of businesses which have different economic, marketing and growth characteristics—(1) its regular route services, and (2) its charters and tours.

The nature of the traffic and growth characteristics of these two businesses are distinctly different. In 1950, but transportation services in this country was almost exclusively regular route. Charters accounted for only 7 percent of passenger miles carried. Today, tours and charters account for approximately 48 percent of passenger miles carried, and 51 percent of passengers handled. The larger carriers tend to concentrate in regular route service while the smaller carriers concentrate more in tours and charters. For example, Greyhound and Trailways, respectively, currently carry 18 and 25 percent of their passenger miles in tours and charters. Other first class carriers average 36 percent. Passenger miles in charters and tours for Class II and III carriers constitute 86 percent of their total.

Third, the intercity bus industry cannot be classified as a "growth industry." While total intercity travel by all modes of transportation has increased 300 percent since 1950, passenger miles by intercity bus have increased only 20 percent. Bus traffic has dropped from 4.5 percent of the total intercity passenger miles in 1950 to 1.8 percent in 1979. But, even those figures, bleak as they are, conceal the true decline of the bus industry as a regular route common carrier. Passenger miles on regular route operations have actually declined 33 percent since 1950 in spite of the explosive growth in total travel. In 1980, bus regular route passenger miles were less than one percent of total intercity passenger miles, as compared to 4.5 percent in 1950.

The essential fact of the matter is that intermodal competition has overwhelmed and devastated the regular route intercity bus service.

The technological development of the bus has been incremental in nature. Its development has not been able to match the explosive technical changes of the airplane since 1950. Automobile traffic has come to dominate all short and medium haul intercity trips. Today, almost 90 percent of all intercity traffic moves by car.

In recent years, airline competition has intensified with the introduction of promotional rates on long haul routes well below the general rate level of the intercity bus industry. This has resulted in a further diverson of long haul bus traffic to the airlines. In addition, there has been lately a series of new airlines starting up on short haul routes which have much lower costs and are charging much lower rates than established carriers. Their rates on weekends are as low as 25 percent of regular airline fares. These compete is price directly with the bus industry for its prime weekend traffic flows.

Until 1971, rail passenger service had been adversely affected by this same competition with airlines and private cars, and was declining steadily as was bus traffic. However, in recent years, heavy government subsidies to Amtrak have brought about a resurgent rail passenger service. Now today Amtrak also has become a major factor adversely affecting the economic well-being of the bus industry.

Fourth, the degree of intermodal competition which impacts the intercity bus industry is infinitely greater than that faced by any other mode of transportation. Beyond five hundred miles or so, airlines compete only among themselves.

The trucking industry has some competition from the private fleet owners of trucks, but it is not nearly so extensive as is the competition of the car with the bus. There is also some competition for the movement of heavier shipments between the truckers and the railroads and the inland waterway carriers. But, basically, the principal competition for the bulk of its products is intramodal, trucker competing with trucker. It is not intermodal. The trucking industry has experienced a steady high rate of growth and now carries nearly 40 percent of the total intercity freight in this country. Its gross tonnage as well as its share of total freight haulage is constantly increasing.

Fifth, in addition to overwhelming intermodal competition, there is strong intramodal competition between bus companies. On regular route services, the two nationally organized bus systems compete with each other in a majority of the national markets for longer haul traffic. They also compete with hundreds of smaller bus lines which offer local and regional regular route service. In turn, there is competition between local carriers themselves for regular route traffic.

More importantly, through, in the tour and charter business which is one-half the total intercity bus passenger traffic, there is pervasive multiple carrier competition in virtually all markets, even the smallest.

Economic conditions in the industry

The net result of the loss in competitive position of the bus industry and the decline in regular route traffic over a period of thirty years is a bus industry which is financially weak. The rate of earnings of the intercity bus industry peaked out in 1971 when it experienced an operating ration of 89.4. With revenues of $953 million that year, the industry achieved a reasonable level of earnings of $101 million before taxes. Following that, however, there was a steady decline in earnings each year until a bottom was reached in 1976-1977-1978 with profits ranging from $52 to $55 million annually in three years. The operating ratio continued to deteriorate, however, until it reached a high of 96.1 in 1978. With the increase in traffic in 1979 and 1980, due to the shortage of fuel for automobiles, earnings rose to $88 and $122 million respectively, but far short of the 85 operating ratio historically regarded as being necessary to keep the industry economically sound and provide for new capital purchases. The operating ratio still remains critically high. It was 94.6 in 1979, 93.6 in 1980, and rose above 94 in 1981. The trend will likely be still higher in 1982. The current level of earnings does not reflect its increased dollar volume of revenues which now exceed $2 billion.

Currently, the industry operates a large number of routes which are either losing money directly or are only marginally profitable. The 33 percent decline in regular route passenger miles since 1950 has been accompanied by a reduction of only 21 percent in route mileage. As a result, there are a large number of routes serving rural communities which are cross-subsidized by other profitable routes and charter operations.

It has only been the steady growth of tours and charters which has enabled the industry to remain a viable factor in intercity passenger transportation. Without the development of charters during this period, the industry would be radically different in character than it is today. There would be substantially fewer carriers with a large number having passed into bankruptcy.

The result of the contraction of traffic on regular route services with an expansion of traffic in charters and tours is that virtually all applications for new operating athority have been for tours and charters rather than for regularly scheduled operations.

An ABA summary of applications for operating authority filed with the Commission during the three years 1976-1978 shows 526 applications for charter authority, as compared to only 84 for regular route authority.

The essential fact of the matter is that the long term decline in regular route traffic has created distortions in this industry which will bring about major repercussions if total deregulation takes place administratively or by congressional mandate. A furor has been created during the last two years with airline abandonment of a few score communities and with a reduction in quality of service at some smaller points and higher fares at others. The number of communities which may be adversely affected by complete deregulation of entry into the intercity bus industry as advocated by the Administration and ICC will exceed this substantially. On the other and, we believe H.R. 3663 will minimize the number of communities losing service. Service termination will take place only after a hearing and decision process which can provide for an orderly substitution of service if needed in the public interest. The state would have the lead role, in any event, and there is a provision whereby a carrier could be required to continue service, if the ICC, on appeal, did not determine that it was inconsistent with the public interest or a burden on interstate commerce. Very importantly, the House bill has a number of provisions which makes it easier for communities to replace existing carriers or gain new service.

The subsidy required to provide protection for smaller communities on the scale that would be required by unrestricted entry simply does not seem to be practical. No one wants large scale subsidy, neither the industry, the states, nor the federal government. If entry is totally unrestricted, this country will have to face up to the issue as to just how critical local intercity bus service is to rural areas. It is simply not practical to force existing carriers to cross-subsidize losing rural routes from profitable services and permit new entrants in the market to engage solely in the profitable markets, either charters or regular routes. Inevitably, in time, existing carriers will be forced to discontinue the losing operations to be competitive, or go out of business.

This industry needs to be treated differently from either the airlines, the truckers, or the rail industry, both in legislative and in actual regulatory practice by the ICC. There is economic justification for this. The indsutry is vested with a public interest in the classical sense. Yet, even though the unique characteristics of the bus industry require that it be treated distinctly differently from the trucking industry, there is no reason to treat it in more extreme fashion. H.R. 3663 already goes beyond what was done by Congress in the trucking legislation.

These basic facts constitute the framework for regulatory reform legislation for the bus industry. Let us now examine the connection between these facts and H.R. 3663.

Regulations governing entry

The entry regulations proposed in H.R. 3663 are designed to accomplish two major objectives—to insure, first, that carriers are financially responsible and are fit from the standpoint of safety, and second, to insure that the public is better off with the proposed service than without it. These two objectives of entry regulation are interrelated. Neither objective can be attained if the other is abandoned. Entry under the provisions of this legislation is less restrictive than the trucking legislation enacted last year and it poses no insurmountable barriers that would prevent carriers from offering their services to the public.

Financial soundness

In regard to the first objective to see that carriers are financially responsible and are fit from the standpoint safety, we believe present rules governing the minimum level of liability insurance are grossly inadequate. The traveling public is simply not protected and the improvident bus operator risks his own personal bankruptcy. H.R. 3663 would raise the present $500,000 minimum to $5,000,000.

The minimum insurance requirement proposed by the bill would not bar qualified persons from entering the bus business. In Section 30 of the Motor Carrier Act of 1980, the Congress provided that the minimum level of financial responsibility for transporters of hazardous substances shall not be less than $5,000,000. Those who transport up to 47 passengers in a bus should be required to provide the same level of protection. The approximate cost per bus of liability insurance ranging from the present $500,000 single occurrence minimum to various minima up to $5,000,000 is as follows:

Amount of insurance	Less than 300 miles		More than 300 miles	
	Cost per bus	Increased cost per bus	Cost per bus	Increased cost per bus
$500,000	$2,248		$2,809	
$2,000,000	2,641	$393	3,261	$452
$5,000,000	2,591	1,343 [1] +60	4,211	1,402 [1] +50

[1] Percent.

Source: Figures supplied by the Transit Casualty Company of Los Angeles, California, but the rates are taken from its manual and, therefore, no special debits or credits would apply.

This level of insurance would not impose an undue burden on people who want to get into the bus business or remain in it.

At the present time, the safety fitness of applicants for operating authority is seldom checked by the ICC or the DOT. There should be both an initial and continuing requirement strictly enforced to assure the safety of the travelling public. Operating authority should not be issued to persons who are not in compliance and who cannot reasonably be expected to comply with Federal motor carrier safety laws and regulations. Also, the Department of Transportation should be directed to assure compliance with Federal safety laws and regulations not only by ICC-certificated carriers, but also by carriers who transport passengers in interstate commerce without authority. The enhanced penalties for illegal operations in H.R. 3663 are good but very little can be accomplished if the agencies cannot or will not follow through on detecting and dealing with these entities.

Economic objectives of entry regulation

The intercity bus industry is vested with a public interest. The basic issue is whether this public interest can best be promoted by some regulated competition designed to preserve a balance of values or best be promoted by unrestrained competition.

We believe that some continued discipline in entry provision will best strike that balance and H.R. 3663 so proposes, though the provisions are not as strong as the industry sought. The Motor Carrier Act of 1935 was enacted because competition, uncontrolled except by the law of the marketplace, had failed to produce a sound and dependable system of intercity bus transportation. Since then, regulated competition has produced such a system. Control of entry has always been an integral part of the regulatory structure. Its purpose is not to prevent competition, but by striking a balance between demand and available service, to promote an effective level of competition which will produce a balanced and comprehensive level of service and not be destructive in nature. Some regulation of competition is required to insure that carriers fulfill their public interest obligations without discrimination. Passengers are the primary beneficiaries of these objectives, especially those who live in relatively small or isolated communities.

The various obligations that are imposed on motor common carriers of passengers and that are not imposed on businesses generally could not be enforced if entry were unrestricted. For example, a carrier required to provide essential but unprofitable service can only do so effectively if there is balance in government regulation which does not hold the incumbent carrier in place while others freely invade the more profitable markets of that carrier.

Entry provision of H.R. 3663

Section 6 of the bill would make it easier for persons to enter the intercity bus industry and for existing carriers to expand their operations. Greater ease of entry would be accomplished in three ways. First, an applicant would no longer be required to prove that the proposed service is "required by the present or future public convenience and necessity." Second, an applicant would no longer be required to produce any evidence of public support. Third, no application would be denied unless opponents could show that granting the authority would not be consistent with the public interest. In effect, the bill establishes a presumption that a grant of operating authority to a fit applicant would be consistent with the public interest. As noted by the House Committee on Public Works and Transportation, the bill provides easier entry for motor carriers of passengers than the Motor Carrier Act of 1980 provided for motor carriers of property.[2]

The proposed legislation, wisely in our opinion, prohibits automatic certification. Like the Motor Carrier Act of 1980, the bill prohibits master certification of carriers based on general findings made in a rulemaking proceeding.

Even though entry under the terms of the bill is greatly liberalized, there are sound reasons why it should not be made automatic. In some cases, a grant of operating authority, even though the applicant is fit, will be detrimental to the interests of the traveling public. The ICC should be required to determine, on a case-by-case basis, whether the public would be better off with the proposed service or without it. Such a determination is mandated by provisions of the bill which require the Commission to consider the effect of a grant of operating authority on (1) the transportation policy declared by the Congress; (2) service to small communities; (3) commuter bus operations; and (4) the ability of an existing carrier to continue to provide essential portions of its regular-route passenger service.

We believe that the entry control section of the bill should be strengthened in one material respect. The bill now requires the Commission "to consider," in the case of applications to transport passengers in special or charter operations, "whether any party to the proceeding . . . is receiving transportation-related financial assistance from any governmental department agency, or instrumentality." It is contrary to the public interest to permit massively subsidized transit authorities to compete with privately-owned, unsubsidized carriers who provide excellent charter service at reasonable rates. it is contrary to sound public policy to transfer jobs from the private to the public sector. It is contrary to sound transportation policy to regulate competition between publicly-owned and privately-owned operators where such competition can be avoided. Therefore, ABA recommends that paragraph (4) of proposed new section 10922(c) be amended to read in pertinent part as follows:

"(4) In making any findings relating to the public interest under paragraphs (1) and (2) of this subsection, the Commission shall consider, to the extent applicable, at least the following:

* * * * * * *

"(C) in the case of an application for authority to provide special or charter transportation filed by a recipient of Federal financial assistance for the purchase or operation of buses, whether the special or charter service of existing carriers is adequate; whether such service is provided at reasonable rates; and whether the proposed additional service is required by the present or future public convenience and necessity."

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[2] H. Rept. No. 97-334, 97th Cong., 1st Sess. (1981) 29.

State regulation of exit

There is a clear conflict of interest between state governments and the ICC in their approaches to regulation of the bus industry. In many instances, the state governments look to the profitability of the interstate operation of a carrier to support its intrastate services. Many decisions made are a substantial burden on interstate commerce. Appendix III clearly shows this fact.

The need to preempt State authority in this area is clear and pressing. The bus industry is losing millions of dollars each year from unprofitable operations that cannot be discontinued. These losses are an economic drain on the carriers, requiring higher systemwide fares that must be paid by passengers on the other routes. The public interest, as distinguished from the parochial interest of a handful of passengers, is not served by requiring carriers to continue hopelessly unprofitable regular-route service. In effect, the carriers are subsidizing the communities involved out of earnings that would otherwise be used to improve viable operations.

Specific examples of the severity of State regulation of service discontinuance are set forth in the House committee report on H.R. 3663.[3] Most States require hearings before an abandonment request is decided. Typically, the carrier first must file an application to discontinue. Then it must wait until a notice is published. The matter is then set for an oral hearing, which usually will be held even if the application is unopposed.

There are a large number of abuses of this process which result in a serious burden to interstate commerce.

Furthermore, it would be unworkable to require existing regular-route carriers to continue unprofitable intrastate service when no comparable burden would be imposed on newly-certificated interstate carriers. Deficits incurred in providing intrastate regular-route service in the past were tolerable because they could be covered by revenues from more profitable routes or from charter and special operations. Such cross-subsidies will no longer be possible under conditions of liberalized entry.

In addition, the time-consuming and expensive discontinuance procedures required by most States inhibit carriers from initiating service innovations. For example, carriers are reluctant to test new markets because they may find it difficult to abandon an experiment which has failed.

As noted by the ICC in its report of December 15, 1980, a "balanced regulatory reform proposal must consider the interaction of entry, rates, and exit regulation" and the latter" should be a key element in any regulatory reform proposal."[4]

Both the industry bill (S. 926 and the ICC bill (S. 927) as introduced, gave ICC-certificated carriers an absolute right to discontinue unprofitable intrastate service by a specific date. The only limitation concerning exit in either bill is that carriers desiring to terminate intrastate service could be required in some circumstances to continue the service for six or seven months so that the affected communities could attempt to arrange for financial assistance or replacement service. H.R. 3663 introduces a process involving an original decision by the state, provision for appeal to the ICC if the state decision is adverse and a final decision by the ICC which can result in a continuation of service permanently.

We urge the adoption of a provision in the exit section so that interstate motor carriers of passengers will be able to discontinue unprofitable regular-route service on a date certain. There is an important amendment which is needed to make the exit section work effectively.

State regulation of rates

As with state regulation of exit, there can be an inherent conflict of interest between states and the federal government in regulation of rates. The rate regulation of many States is discriminatory. There are clear instances in the past when states have held rates down below costs and forced the carrier to achieve his small revenue needs from the interstate passenger. This is unquestionably a burden on interstate commerce. Examples of such action are shown in Appendix 4.

Many states, in effect, force the interstate passengers and shippers of express to subsidize intrastate passengers. A continuation of these inequities would deny to the public the benefits expected to flow from the fare flexibility provisions of the proposed legislation. States which already discriminate against interstate traffic would be inclined to deny intrastate fare increases whenever the carriers involved had not utilized the zone of rate freedom established by Section 11 of the bill.

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[3] H. Rept. No. 97-334, 97th Cong., 1st Sess. (1981) 53-55.

[4] This report was sent to the Senate Committee on Commerce, Science, and Transportation to explain the provisions of the ICC bill, the Motor Bus Act of 1981, introduced in the Senate on April 8, 1981, by Senator Cannon (by request), as S. 927.

In the legislation originally proposed by the industry and the ICC, the States would have been required to regulate intrastate passenger fares and express rates of interstate carriers in accordance with standards and procedures approved by the ICC. State authority over intrastate bus fares and charges would have been preempted in the same way as State authority over intrastate rail rates. 49 U.S.C. Section 11501(b). Although the pending legislation would preempt State authority to a lesser extent than Section 214 of the Staggers Rail Act of 1980, we believe Section 17 of the House bill achieves a reasonable accommodation of Federal and State interests, even though it doesn't go as far as we had suggested.

Section 17 of the bill would authorize the ICC to prescribe an intrastate rate or practice, including the scheduling of buses, if the State had either denied or had not acted finally on the carrier's request within 120 days after filing (within 60 days on requests to change schedules). On appeal from the State's denial of a proposed increase in fares or its failure to act, the ICC would be required to take final action within 60 days (30 days in cases involving bus schedules). The Commission would prescribe any rate or schedule for intrastate bus transportation if it found that the State-imposed rate or schedule constituted an unreasonable burden on interstate commerce. The bill would establish rebuttable presumptions of an unreasonable burden on interstate commerce if the Commission found that (1) the intrastate rate is lower than the rate charged by the carrier for comparable interstate transportation; and, (2) the intrastate rate produces revenues that are lower than the variable costs of providing the service.

An undue burden on interstate commerce would be conclusively presumed if the Commission found (1) the most recent general intrastate fare increase allowed by a State is less than the most recent general fare increase approved by the ICC for interstate transportation; and, (2) that changes in bus schedules proposed by a carrier and disapproved by a State would conform intrastate schedules to interstate schedules on the same route.

These presumptions, we submit, are reasonable and necessary. Under conditions of liberalized entry under Federal law and greater rate freedom, intercity bus operators will not be able to subsidize intrastate transportation from interstate revenues. Some States do not discriminate against interstate traffic but so many do that legislative relief is imperative. The extent to which intrastate fares are depressed and examples of inordinate delay on requests to change schedules are related in the report of the House Committee on Public Works and Transportation and will not be repeated here.[5]

Regulation of the frequency of bus service by either the Federal or State regulatory commissions is of dubious value. All that would seem to be required is the giving of reasonable notice of schedule changes to the affected public. If more stringent regulation is condoned, however, we believe Section 17 of the bill should be amended so that States would be given a maximum of 30 days rather than 60 days within which to act on proposed changes in bus schedules.

CONCLUSION

The bill before the Subcommittee embraces difficult issues of law, transportation policy, and Federal-State relations. It is a product of many hours of public discussion and open negotiation. On balance, it is a good bill. We believe the bill can be improved, but that it should not be burdened by disruption and extreme proposals. For convenient reference, all the amendments we think should be considered are set forth and explained in Appendix 1 to this statement.

These are fateful times for the bus industry, but I am optimistic. One reason for that optimism is that the Congress is giving consideration to reform of regulatory legislation which was first enacted into law forty-six years ago. It is modernizing economic regulatory policies which long ago became obsolete for our current national economy. This legislation also recognizes for the first time that an industry which is a motor carrier of passengers may not have the same economic problems as an industry which is a motor carrier of property.

In our energy short world, the intercity bus industry has a vital role to play in our economy. This legislation, in the basic form included in H.R. 3663, will enable this industry to perform its vital role.

On behalf of the American Bus Association, I commend the Subcommittee for addressing the issue of bus regulatory reform and for giving us this opportunity to be heard.

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[5] H. Rept. No. 97-334, 97th Cong., 1st Sess. (1981) 55-61.

STATEMENT OF WILLIAM B. GROSSMAN, PRESIDENT, NATIONAL TOUR BROKERS ASSOCIATION

Mr. Chairman and members of the subcommittee, I am William B. Grossman, President of the National Tour Brokers Association. NTBA is the national trade association of passenger tour brokers—the individuals and firms licensed by the Interstate Commerce Commission to arrange and conduct passenger tours by bus or motorcoach. I appreciate this opportunity to describe the position of our Association with respect to the reform of federal regulation of the passenger motor carrier industry, and in particular, our support, in conjunction with the American Bus Association, of the Bus Regulatory Reform Act of 1981 (H.R. 3663) as passed by the House and introduced in the Senate on November 19, 1981.

PASSENGER BROKERS AND THE NATIONAL TOUR BROKERS ASSOCIATION

NTBA is the non-profit trade organization of and for brokers of passenger transportation licensed by the ICC. It is one of the largest travel industry organizations in North America. Its membership consists of over 300 tour brokers across the country and an allied membership of over 1,600 firms associated with the travel and tourism industry, including airlines, hotels, convention bureaus, resorts, and bus companies as well as state travel and tourism departments.

Passenger brokers are persons or firms which arrange for and carry out interstate motorcoach tours for compensation. As such they are neither bus companies, nor agents of bus companies; they are independent entrepreneurs. The tour broker puts together and then carries out a tour package for customers which will include not only arrangements for transportation, but also selection of hotel accommodations, restaurants, travel routes, entertainment, and all the other aspects of comprehensive tour vacations. Such tours range from one-day visits to nearby points of interest to multi-day long distance motorcoach tours.

Recent years have seen great expansion in the quality and variety of offerings for the American and foreign tourist. Tour brokers now utilize a mix of transportation modes in any combination—bus, train, plane, ship, helicopter. This availability of intermodal tours has added an exciting new dimension to tour packaging by our membership. The possibilities of intermodal tours have become endless; the preparation of tour offerings today requires even more expertise than in the past.

Since its establishment in the early 1950's, NTBA's membership tour broker industry has evolved with—and indeed pioneered—many of these new trends in the travel and tourism industry. Today, the American tour passenger is the beneficiary of a wide array of NTBA's membership programs, including its annual "Marketplace" of tour brokers and allied members, associated businesses such as airlines, hotels, convention bureaus, resorts, bus companies and state travel agencies, during which new tour packages are discussed. In addition, the Association and its members have been active in developing public awareness of the energy and cost efficiencies of motorcoach travel during these times of fuel scarcity and inflation. NTBA and its members have been at the forefront in developing awareness of travel and tourism issues generally, and in this regard have been active supporters of the travel and tourism caucuses recently organized in both Houses of Congress.

ICC regulation of passenger tour brokers

Section 10924 of the Interstate Commerce Act requires applicants desiring to operate as passenger brokers to obtain a license by meeting two conjunctive requirements. First, the applicant must demonstrate that it is fit, willing and able to perform the proposed service and, second, that the transportation to be offered will be consistent with the public interest and the national transportation policy. This statutory scheme has been in existence since the original act in 1935, and under such entry requirements the tour broker industry has developed into a highly competitive one with an excellent record of consumer satisfaction. Unlike some other portions of the travel industry, defaults and bankrupticies by licensed tour brokers are simply non-existent. You do not read today about tour strandings in our industry. We are proud of our record; not one NTBA member holding an ICC broker's license has ever defaulted on its ICC-required surety bond.

In 1976, the ICC initiated proceedings to consider the advisability of changing the regulatory licensing of passenger brokers. After two administrative proceedings and two appeals to the U.S. Court of Appeals for the District of Columbia Circuit, the Commission's new rules have been upheld and the agency is now in a position to move forward with their implementation. Their primary thrust is the removal of the public interest or need test. As a result, the Commission will henceforth examine only an applicant's fitness and require the posting of the surety bond. This has brought legal recognition to the fact that the Commission already has opened entry into the broker industry in recent years through the administrative licensing of virtually all broker applications filed at the Commission. This makes the Commission's fitness inquiry all the more inportant from the consumer protection standpoint.

The Bus Regulatory Reform Act of 1981 (H.R. 3663)

As this Subcommittee is undoubtedly aware, the legislation passed by the House was the outcome of very extensive dialogue and discussion by the House Public Works and Transportation Committee with industry groups, state regulators, and consumer groups representing virtually all points of view on the question of bus reform. For our part, NTBA did not obtain all that we had hoped in the Bus Regulatory Reform Act, but we recognize that this is an inevitable result under our legislative process. We join the American Bus Association and other groups in support of H.R. 3663 in its present form as a composite result of various points of view and as a sensible modernization of the Act to provide for a healthy, competitive motor carrier industry in a consumer protective manner.

Focusing on specifics, NTBA is committed to five particular features of the House bill.

First, NTBA supports the definition of fitness for broker licensing which encompasses financial, operational and safety fitness. Applicants would show that they are able to plan and conduct proposed services in a satisfactory manner within or between geographic areas proposed to be served and at locations where business operations are to be conducted. This fitness inquiry in the licensing process is not designed to constitute a barrier to entry, but instead to protect the traveling public from aborted tours and other adverse consequences to the consumer.

Second, NTBA supports the provision in H.R. 3663 proscribing master licensing of passenger brokers, that is, the use of prospective general findings which would be applicable in each and every individual licensing proceeding. If the fitness inquiry is to have any efficacy, it will have to be applied in each licensing proceeding.

Third, we support the declaration of a specific duty by regulated bus common and contract carriers to charter only to parties acting as brokers that hold ICC licenses. It is noted that the Interstate Commerce Act already expresses the converse, namely, that a broker must use a licensed carrier.

Fourth, NTBA supports the requirement in H.R. 3663 that there continue to be a 30-day notice period for any charter or special operations rate change increases, but a 10-day notice period for rate change decreases.

Fifth, NTBA is increasingly concerned about the licensing of publicly funded tour brokers by the ICC. The Commission has granted licenses to broker applicants which directly or indirectly receive public funds—federal, state or local—from governmental agencies or instrumentalities and thereby enjoy an undue advantage over private brokers doing business in the marketplace. As a matter of public policy, we believe that applicants with federal or state public support should not be using public funds to compete against private brokers in the marketplace. The Committee Report of the House Public Works Committee expresses a concern about this development, and we believe this problem is sufficiently important to merit adoption of specific legislative language in the statute. We will submit specific draft language for consideration by the Subcommittee.

In conclusion, NTBA strongly urges that H.R. 3663 be reported out by the Subcommittee to the full Committee for passage by the Senate and enactment into law. H.R. 3663 represents the hard work of many different constituencies. It will allow the motor carrier industry of which we are a part to function in the public interest.

STATEMENT OF WAYNE J. SMITH, EXECUTIVE DIRECTOR, UNITED BUS OWNERS OF AMERICA

Mr. Chairman and members of the subcommittee, my name is Wayne J. Smith. I am executive director of the United Bus Owners of America (UBOA), a trade association representing 1,000 intercity bus companies. We appear before you, this morning, in support of H.R. 3563, the Bus Regulatory Act of 1981.

We come before you, not to recommend extensive change in the bill as it passed the House of Representatives. Rather, we urge that the version before you be left substantially intact. That is not to say, Mr. Chairman, that our members are free of apprehension over what impacts the bill would have on their businesses, were the House-passed version to become law.

Mr. Chairman, UBOA believes that the fit, willing and able provisions, Section 6(c)(1), would make it possible for existing carriers to continue to operate. That will be true, however, only if there is enlightened administration of the accompanying provision authorizing carriers to demonstrate that, "the transportation to be authorized by issuance of the certificate is not consistent with the public interest."

Existing carriers, we believe, would be protected, also, by the provisions of Section 6(c)(3) to the effect that the public interest would not be served if grant of the authority would diminish the ability of any other carrier, "to provide a substantial portion of the regular-route passenger service which such carrier provides."

UBOA is less than serenely certain that charter operators would have their interests weighed properly, were H.R. 3663 to become law in its present form. We do look approvingly on the requirement in Section 6(c)(1)(D) that the Commission weigh the cumulative effects its awards would have on other carriers. What's more, Section 6(c)(1)(C) directs attention to the impact which would result, were authority to be awarded to a recipient of "transportation-related, financial assistance." Historically, we have been sensitive to incursions of Federally funded transit authorities into charter operations. We believe the cited language would enable the Commission to look favorably upon protests by unassisted carriers against probable injury at the hands of Federally funded operators.

We strongly support the provisions of Section 12(a) which would permit the Commission, "to suspend and investigate proposed rates on the basis that such rates may. . .constitute predatory practices." Only a few days ago, we were told by The Commission that we could do nothing to inhibit a carrier from operating under a predatory tariff. The Commission official was not the least bit hesitant to concede that the rate in question was, in fact, predatory.

One of the most controversial aspects of common carrier deregulation is the termination of anti-trust immunity in the development of joint-line or through rates. To be mobile, the traveling public needs access to readily available through rates to any conceivable destination. We believe H.R. 3663 would enable such through rates to continue to be available. Section 10(a)(4)(E) limits joint ratemaking to carriers which, "can practicably participate in such movement." We believe the provisions are broad enough to provide protections to interlining carriers who seek to work out bona fide through rates on particular routes.

UBOA believes the operational, safety and financial stipulations in H.R. 3663 provide important criteria to the Commission as it wrestles with increasingly numerous applications for authority. We applaud, especially, the stipulations that fines are to be imposed for each day of illegal operations, as provided in Section 23.

With regard to fitness only criteria (Section 6), it was gratifying to note that, in its report accompanying H.R. 3663 (House Report 97-334) wrote legislative history which should make it difficult to distort the fitness-only standards for purposes other than those for which they are intended.

Finally, UBOA hopes, Mr. Chairman, that the bill which, ultimately, is reported, will include provisions pre-empting State practices which would thwart the proper functioning of entry, exit or other pertinent provisions currently appearing in H.R. 3663.

In sum, Mr. Chairman, UBOA is certain that the bill before you is, in no way, a cure-all for ills affecting the private, intercity bus industry. We do believe it has much to commend itself to your favorable attention. Accordingly, UBOA pleads for an early, favorable report.

STATEMENT OF JOHN A. GRADY, PRESIDENT, NATIONAL BUS TRAFFIC ASSOCIATION, INC.

Mr. Chairman and members of the subcommittee, my name is John A. Grady. I am President and Chief Executive Officer of the National Bus Traffic Association Inc. ("NBTA"). Prior to becoming President of NBTA, I was the Director of the Bureau of Accounts of the Interstate Commerce Commission. I am a member of the American Institute of Certified Public Accountants, American Association of Government Accountants, and have been a past member of the Financial Accounting Standards Advisory Council.

NBTA is the rate bureau for the intercity bus industry and has been in existence since 1933. The Association operates pursuant to the terms of a collective ratemaking agreement approved by the Interstate Commerce Commission.[1] At the present time there are about 350 regular-route carriers of passengers who are parties to the agreement and who participate in the joint initiation, consideration, and establishment of interstate passenger fares and express rates. Since the ratemaking agreement has been approved by the Commission as being in furtherance of the national transportation policy, participation therein by member carriers is insulated from antitrust liability. (49 U.S.C. §10706(c)).

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[1] Section 5a Application No. 9. Approval was originally granted at 278 I.C.C. 147. Subsequent amendments were approved at 308 I.C.C. 33 and in numerous unprinted orders.

Our Association is most appreciative of the interest shown by this Subcommittee in bus regulatory reform. NBTA is primarily interested in the rate bureau, rule of ratemaking, and zone of rate freedom provisions of the proposed Bus Regulatory Reform Act. The following addresses NBTA's position on these provisions.

RATE BUREAU PROVISIONS

Collective ratemaking safeguards

Carrier activities pursuant to collective ratemaking agreements have been closely scrutinized by the Commission since 1948 when the Congress immunized actions pursuant to such agreements from liability under the antitrust laws. In keeping with the policy of closely monitoring exemptions from the antitrust laws, the proposed Bus Regulatory Reform Act (H.R. 3663) provides for the following safeguards on the collective ratemaking of motor carriers of passengers: (1) The right of independent action would be affirmed by prohibiting the rate bureau from changing or canceling any rate established by independent action; (2) The rate bureau could not permit any of its employees or any employee committee to act upon any proposal effecting a change in any tariff item published by or for the account of any of its member carriers; (3) All rate bureau meetings must be open to the public; the name of the proponent of a rule or rate change must be divulged upon request; and the vote cast by any member must be disclosed; and (4) Final action on any proposal must be taken by the rate bureau within 120 days after it is docketed.

For the most part, the proposed statutory safeguards merely ratify the practices followed by Congress, the ICC, and NBTA for many years. For example, the right of independent action was guaranteed by the Reed-Bulwinkle Act of 1948, has always been required by the ICC, and is specifically provided in the rate agreement among bus carriers. The ICC already imposes strict limitations against rate bureau attempts to change independently established rates. 49 CFR 1331.6. All intercity bus carriers establish their own passenger fares and express rates. NBTA has never changed or canceled any independently established fare or rate. NBTA does not permit its employees to act on any proposal which affects or changes any tariff item published by or for the account of any member carrier except upon specific instructions of the carrier. Finally, NBTA has never had an employee committee and does not plan to have one.

Other than the collective ratemaking safeguards, the principal features of Section 10 of H.R. 3663 are as follows: (1) The Commission would be prohibited from approving any rate agreement providing for discussion of or voting on any rate applicable to charter or special transportation; (2) Discussion of and voting on single-line fares would not be permitted on and after January 1, 1984; (3) A showing of parallel behavior would not be adequate evidence that two or more carriers unlawfully discussed or agreed upon a rate; (4) On and after January 1, 1984, discussion of or voting on joint-line fares would be unlawful "unless the carrier can practicably participate in such movement"; and (5) The prohibitions against joint consideration of single-line and joint-line fare proposals would not apply to general increases or decreases in fares or to broad tariff changes.

NBTA's positions on the above features of section 10 of H.R. 3663 are as follows:

Prohibition against joint consideration of rates applicable to charter and special transportation

NBTA has no objection to this prohibition. NBTA has not collectively considered rates for charter or special transportation for several years.

Prohibition against discussing and voting on single-line fares

The prohibition against discussing and voting on single-line fares on and after January 1, 1984, may dissuade carriers, especially the larger ones, from participating in the collective ratemaking process. Although NBTA is opposed to the post-1983 single-line fare prohibition, we are not proposing an amendment to Section 10 of the bill. We are willing to present our case to the Motor Carrier Ratemaking Study Commission which will recommend whether, and to what extent, collective ratemaking should be permitted subsequent to January 1, 1984.

One effect of the ban on joint consideration of single-line fares, coupled with the "practicably participate" requirement, would be to outlaw all unlimited travel fares. H.R. 3663, however, excludes from the prohibition against discussing and voting on single-line fares those rates for unlimited passenger travel. Unlimited travel fares represent an agreement by participating carriers to provide both single-line and joint-line service at a bargain price for a specified period. Without special treatment for unlimited travel, neither Greyhound nor Trailways, for example, could participate in these special fare arrangements for foreign and domestic travelers because the fares, to the extent that only Greyhound's or only Trailways' service would be used, would be unlawfully negotiated single-line fares. Yet, without Greyhound and Trailways participation, no such special fares for unlimited travel could be offered. Greyhound and Trailways could publish such fares but only for travel on their own lines, which would make them much less attractive and which would foreclose participation in that type of travel by smaller bus operators.

If the unlimited travel and reduced fares were limited to travel over the lines of two or more specified carriers, i.e., "practical participants", they would be less attractive to foreign visitors, senior citizens and other passengers. While the House bill excludes from the single-line and joint-line prohibitions "discussions of and voting on rates for unlimited passenger travel", the exception is sound but, in our opinion, not broad enough. The unlimited travel exception should be broadened so that the post-1983 restrictions on collective consideration of single-line and joint-line fares would not apply to—discussion and voting on fares for unlimited passenger travel, excursion fares, senior citizens' fares and such other promotional and innovative fares, applicable to interline movements, as may be specified by the Commission.

Parallel behavior would not be proof of an antitrust violation

There are hundreds of joint-line rates in which one of the participating carriers has a directly competitive single-line rate. The rates for single-line and joint-line service necessarily will be the same in most cases. The single-line carrier will not undercut its single-line fare and that carrier is not permitted to close commercially the joint-line route by insisting that the joint-line fare be higher. For this reason, any prohibition against discussing or voting upon single-line fares must be accompanied by a parallel behavior provision to preclude the drawing of any inference of unlawful action from the identity of single-line and joint-line fares. This provision is included in the House Bill and is essential.

Discussion of and voting on joint-line fares should not be restricted

The House Bill contains the same prohibitions for joint-line fares as for single-line fares except for the concept of "practicable participation". By contrast, the Motor Carrier Act of 1980 imposed no limit on discussion of joint-line fares, and voting was only limited to carriers with "authority to participate" in the movement. NBTA believes there are stronger reasons for encouraging the convenient interchange of passengers than for facilitating the interlining of freight. The requirement of H.R. 3663 that carriers be able to "practicably participate" in joint-line movements is unduly restrictive and should be eliminated.

The phrase, "practicably participate," as a limitation on joint-line ratemaking first appeared in Section 208 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 10706(a)(3)(A)(ii). The phrase was interpreted as follows in *Western Railroads—Agreement,* 364 I.C.C. 1, 17: "We believe that practical participants in an interline movement are only those carriers who are direct connectors to a specific joint-line movement * * *."

Under that definition, every joint-line fare would have to be set on a route-by-route basis as well as on a carrier-by-carrier basis. The intent of the "practicably participate" requirement was explained as follows in the report of the House Committee on Public Works and Transportation:

"The statutory limitation with regard to joint-line rates is included because it is the Committee's view that a carrier should not be able to discuss or vote on every joint rate proposal. * * * if carriers G and H serve Los Angeles and Portland over a different and more circuitous route, the Committee does not intend that these carriers be considered as able to 'practicably participate' in such route. Similarly, if a carrier can participate in a Los Angeles-Portland movement from a different origin, for instance, Dallas, Texas, it is not the Committee's intent that the carrier be considered a practicable participant in the movement for the purposes of this section." (H. Rep. No. 97-334, 97th Cong., 1st Sess. (1981) 39).

The House Committee recognized, however, that a strict interpretation of the route-by-route and carrier-by-carrier requirement for joint-line ratemaking would disrupt passenger travel. Accordingly, the House Committe report at page 39 placed the following gloss on the meaning of "practicably participate":

"However, it is our intent that motor common carriers of passengers should be able to discuss and vote upon joint rates if such rates are applicable to substantially similar through routes which have the same points of origin and termination and provide service generally to the same intermediate points. For example, if carriers A, B, and C and carriers D, E, and F maintain joint rates between Los Angeles and

Portland over the same general routes serving generally the same intermediate points, they would be granted antitrust immunity under an approved bureau agreement to discuss, participate in, or vote on joint-line rates between those points."

NBTA believes carriers are not going to risk substantial fines and carrier officials are not going to risk imprisonment by guessing whether a rate applicable to a specific joint route can be concurred in by different carriers participating in "substantially similar" through routes.

The importance of interline traffic in the bus industry cannot be overstated. Table I, which is attached, shows that, for the carrier respondents, the average percentage of total regular-route passenger and express revenue generated by interline operations was 35.7 percent. Of total regular-route passengers a full 40 percent were interlined on the routes of one or more other carriers.

Greyhound shows a comparatively lower percentage of interlining, because it is the largest carrier in the group and has the most far-reaching network. Yet, the smaller carriers shown participate in Greyhound's (and each others') interline operations and, for these carriers, interlining is quite a substantial and necessary portion of their total business.

A further indication of the extent and pervasiveness of interlining is provided by Table II, also attached, which was constructed from an ICC study of "bridge" carriers. As you know, a bridge carrier neither originates nor delivers passengers, but simply acts as a connector between two other carriers. The ICC study shows that interline revenues as a percentage of total intercity passenger revenues ranged from as low as 33.9 percent to as high as 87.9 percent. Interestingly, this range represents only the interline revenue to these carriers from interline tickets sold by other carriers, and does not include revenues from the included carriers' own interline ticket sales. In other words, these percentages are quite understated.

The significance of the interline data presented in Tables I and II is twofold. First, a prohibition of collective ratemaking will make it impossible or, at best, very costly, to maintain this system which is fundamental to the continuance of our country's bus transportation network. Second, if interlining is made impossible, its loss would likely cause bankruptcies among smaller carriers which currently provide the only available service to numerous small towns and cities across the country.

The need for joint consideration of general increases and decreases

The Motor Carrier Act of 1980 recognized that motor carriers of property must discuss and establish general rate increases. Accordingly, Congress provided for continued antiturst immunity on general rate increases involving both single-line and joint-line rates, subject to certain conditions and limitations. 49 U.S.C. § 10706(b)(3)(D)(i). Because of the similarity between regular route passenger carriers and LTL property carriers, the House Bill continues antitrust immunity for general rate increases of motor carriers of passengers and NBTA supports this provision.

If carriers are required to increase or decrease rates on all their traffic by individual action and at the same time enter into joint-line rates on a route-by-route basis, the rates applicable to joint-line service would not be widely known. The present tariff structure, which establishes rates and fares from over ten thousand origins to over ten thousand destinations, would be replaced by publication of point-to-point rates. The publications would be so voluminous and so frequent that they could not be used by commission agents in restaurants, gas stations, and drug stores in thousands of small towns across the country. The employees of commission agents who sell bus tickets over the lines of two or more carriers are typically clerks who are not highly trained and who are engaged primarily in other work. It is already difficult to keep such people supplied with current fare and tariff information but elimination of antitrust immunity, with the consequent increase in the size and frequency of tariff publications, would make it impossible for them to sell through tickets to distant destinations. Passengers would be seriously inconvenienced by having to purchase tickets enroute to final destination.

By scrupulous preservation of the right of independent action, any carrier can carry out any competitive initiative which it considers appropriate in the light of market conditions. The function of the rate bureaus is to permit collective action in an industry whose interdependent nature requires a substantial degree of cooperation. Any prohibition against collective action on general increases or decreases would be a disservice to both carriers and passengers and especially to small carriers and to passengers travelling to and from small communities.

Collective consideration of joint rates as a part of general increase proposals is not only convenient, but essential for the convenience of passengers and for the participation of smaller carriers in joint-line movements. The major competitors of the bus industry are the private automobile, and, to a much lesser extent Amtrak. The driver of the automobile, like the Amtrak passenger, knows the cost from the origin to the destination of the trip. The bus industry would be placed at a severe disadvantage if it could not tell all passengers what the total cost of transportation is from origin to destination.

The smaller carriers will be hit the hardest. These are primarily feeder lines for the major intercity carriers. They rely heavily on connections with Greyhound Lines, Inc., and with Trailways, Inc. If these small bus companies cannot quote a passenger a complete price from origin to destination, and if that passenger cannot check his or her baggage through to destination, one of the great advantages of bus travel will be lost. Many passengers will not board a bus, if they do not know what the cost of the second or third legs of the trip will be.

It is not an answer to say that a rate may be found by a "computer". In the bus industry, no such computer program exists, although some individual companies do have their own rates on computer. It would be prohibitively expensive and totally impractical to install a computer terminal in the thousands of gas stations, restaurants, and drug stores which serve as bus stations.

The ability to confer and decide on general increase and decrease proposals, including those involving joint rates, without the fear of antitrust liability, is an important competitive mechanism and is necessary for the survival of small regular-route operators.

Continuation of antitrust immunity for general increases and decreases in passenger fares and for broad changes in tariff structure will permit continuation of uniform rules for baggage handling, so that the passenger's luggage may be checked through from origin to destination. Collective action enables carriers to establish uniform rules for liability, handling, excess weight, and related matters. Absent such uniformity, it would be difficult for passengers to determine the extent to which their baggage could be insured against loss or damage.

THE REVISED RULE OF RATEMAKING

The provisions of Section 9 of H.R. 3663 which deal with Revised Rule of Ratemaking establish a rule of ratemaking under which carriers could recoup their inflationary costs with a minimum delay. The House Bill, like the Motor Carrier Act of 1980, would provide explicit directions to the ICC in its consideration of general rate increases proposed by motor carriers. In the past, general fare increases have been granted only to the extent that they were based on increased costs already experienced by the carriers. H.R. 3663 would provide for prospective relief. It requires the Commission to take into account future anticipated escalating costs.

Revision of the rule of ratemaking will not enable the industry to gouge any captive market for, as former ICC Chairman Gaskins observed:

"The intercity bus industry faces numerous competitors in the intercity travel market. Competition from Amtrak, the airlines, and especially the automobile forces the industry to be very conscious of pricing policies and the services offered. Intermodial competition generally protects the bus passenger by forcing bus companies to be competitive."

If the cost recovery problems of the intercity bus industry are solved, the traveling public will benefit. Because of the industry's inability to recover inflationary cost increases in the early 1970's, return on investment declined from 20.7 percent in 1971 to 12.5 percent in the twelve months ended June 30, 1981, and for the same periods, return on stockholders' equity decreased from 16.1 percent to 10.6 percent. If the industry is not permitted to achieve adequate revenue levels, it cannot continue to operate over 270,000 miles of highways serving approximately 15,000 communities with over 50,000 scheduled and non-scheduled stops.

ZONE OF RATE FREEDOM

The Zone of Rate Freedom is provided for in Section 11 of H.R. 3663. This provides flexibility in determining fare levels. NBTA's only objection to the ZORF section of the House Bill is that in determining the maximum permissible no-suspend adjustment, the ICC would not be required to disregard up to five percent of any general increase obtained in the one-year period prior to the effective date of the proposed rate. There is no reason why passenger carriers should be treated less favorably than property carriers.

The principal feature of the fare flexibility provisions of H.R. 3663 are as follows: (1) The ceiling of the zone rate freedom would permit no-suspend increases in interstate passenger fares and express rates of not more than 10 percent above the rates and fares in effect one year prior to the effective date of the proposed increase; (2)

In determining whether the aggregate of increases in a proposed rate that is to take effect is more than 10 percent above the rate in effect one year prior to the effective date of the proposed rate, general fare increases would be included in determining the maximum allowable no-suspend increase; (3) The floor of the no-suspend zone would permit no-suspend passenger fare decreases of not more than 20 percent below the fare in effect one year prior to the effective date of the proposed fare reduction; (4) No-suspend increase and decrease limits could be raised or lowered respectively by ten percentage points during any one-year period if the Commission found that "there is sufficient actual and potential competition to regulate rates and there are benefits to the traveling public from further rate flexibility, or such increase is necessary to allow motor common carriers of passengers to meet the costs of inflation"; (5) Joint-line fares could be raised or lowered within the zone of rate freedom; and (6) All flexible fare adjustments would be subject to the antitrust laws, which means that all such adjustments must be made by individual carrier action rather than by rate bureau action.

In general, the thrust of the fare flexibility proposals of the Commission and the bus industry is to spur competition in service and in pricing. The objective is to give carriers and the traveling public the ability to provide and to utilize a variety of service and price options. Because the new pricing flexibility provisions could be utilized only by independent action, a more competitive bus system would be created. In every aspect, creation of a specified no-suspend zone of reasonableness furthers the public interest.

CONCLUSIONS

On behalf of the National Bus Traffic Association and its member carriers, I want to thank the Subcommittee for the opportunity to appear here today and to comment on the rate provisions of the proposed Bus Regulatory Reform Act (H.R. 3663).

TABLE I.—1980 INTERLINE DATA FOR NBTA STUDY CARRIER RESPONDENTS [1]

Carrier	1980 total regular route		1980 interline		Column 3 as percent of column 1	Column 4 as percent of column 2
	Passenger and express revenue	Passengers	Passenger and express revenue	Passengers		
Bonanza Bus Lines	$9,684,250	1,882,473	$1,492,499	242,683	15.4	12.9
Capitol Bus Lines	3,008,073	457,817	900,000	187,705	29.9	41.0
Carolina Coach Co	21,820,794	2,450,775	10,417,878	1,273,748	47.7	52.0
Greyhound Lines, Inc	718,785,893	52,326,742	79,382,000	5,701,128	11.0	10.9
Gulf Transport	2,430,313	171,891	1,303,436	117,884	53.6	68.6
Indian Trails, Inc	2,749,109	259,782	1,530,421	142,880	55.7	55.0
Jefferson Lines, Inc	9,310,583	700,604	3,702,170	315,272	39.8	45.0
Kerrville Bus Co	7,779,268	499,570	3,467,101	225,994	44.6	45.2
New Mexico Transportation	4,400,358	241,653	1,641,134	108,400	37.3	44.9
Oklahoma Transportation	4,758,579	357,856	2,159,691	158,000	45.4	44.2
Southeastern Trailways	3,077,739	123,689	1,251,636	65,540	40.7	53.0
Texas, New Mexico and Oklahoma	6,295,877	258,331	2,032,816	92,294	32.3	35.7
Trailways Inc. and Subs	258,045,000	18,184,000	63,896,000	6,100,000	24.8	35.5
Vermont Transit	7,293,601	698,062	1,606,794	124,710	22.[illegible]	17.9
Average carrier percent of interline to total:						
Revenue					35.7	
Passengers						40.0

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[1] NBTA "Study Carriers" are those which qualify under ICC guidelines to represent the entire regular-route bus industry in filings before the ICC for general fare and rate increases; of approximately 18 such carriers, 14 responded to a recent NBTA request for interline data.

[2] Trailways, Inc., consolidated with the 14 bus company subsidiaries which make up the Trailways-owned portion of the Trailways Bus System.

TABLE II.—BRIDGE CARRIERS HIGHLY DEPENDENT ON INTERLINE REVENUES

(From ICC Bridge Carrier Study, Appendix C)

Carriers	March 1978 revenues from received traffic percent of total intercity passenger revenue			Total all columns
	Feeder (GL & TWI)	Bridge (GL & TWI)	Other bridge and feeder	
Class I:				
Carolina Coach Co	25.9	14.3	5.0	45.2
Gulf Transport Co	32.9	14.4	5.5	52.8
Indian Trails, Inc	33.7	.7	4.4	38.8
Jefferson Lines, Inc	8.7	35.8	5.0	49.5
Kerrville Bus Co	51.3	1.3	9.5	62.1
Las Vegas-Tonopah-Reno	30.6	12.1	2.1	44.8
Oklahoma Transportation Co	19.1	17.4	7.6	44.1
Pacific Trailways	48.9	13.2	1.7	64.7
Southeastern Trailways	14.4	32.8	2.1	49.3
Class II:				
Deluxe Trailways	25.3	31.0	1.1	57.4
Empire Line	9.5	12.1	12.3	33.9
K. G. Lines	30.0	17.0	5.4	52.4
Orange Belt Stages	33.5	52.5	1.9	87.9

TABLE II.—BRIDGE CARRIERS (Continued)

Carriers	March 1978 revenue from received traffic			Total all columns
	Feeder (GL & TWI)	Bridge (GL & TWI)	Other bridge and feeder (approximately)	
Class I:				
Carolina Coach Company	$249,253	$137,724	$47,492	$434,469
Gulf Transport Company	30,460	13,321	5,033	48,814
Indian Trails, Inc.	42,023	857	5,508	48,388
Jefferson Lines, Inc.	25,405	104,600	14,563	144,568
Kerrville Bus Company	146,409	3,805	27,006	177,220
Las Vegas-Tonopah-Reno	46,939	18,446	3,300	68,685
Oklahoma Transportation Co.	28,999	26,358	11,556	66,913
Pacific Trailways	119,804	31,735	4,029	155,568
Southeastern Trailways	14,439	32,737	2,059	49,235
Class II:				
Deluxe Trailways	13,649	16,761	576	30,986
Empire Line	3,850	4,900	4,995	13,745
K.G. Lines	19,364	11,007	3,434	33,805
Orange Belt Stages	14,228	22,255	809	37,292

STATEMENT OF LOWELL HANSEN II, PRESIDENT, JACK RABBIT LINES, INC., SIOUX FALLS, S. DAK.

Mr. Chairman, members of the subcommittee, I appreciate very much this opportunity to present a statement to you in support of H.R. 3663, the Bus Regulatory Reform Act of 1981.

I am Lowell Hansen, II, president of Jack Rabbit Lines of Sioux Falls, South Dakota. Jack Rabbit was started in 1924 by my father; it has been—and it remains—a family-owned, family-run business.

We operate 5,700 miles of regular route service a day throughout South Dakota and to points in North Dakota, Minnesota, and Iowa. Our regular route service, including package express, accounts for 75 percent of our total volume. The remaining 25 percent is charter and tour service averaging 2,500 miles per day. Clearly, unlike many intercity bus operators, our charter service is incidental to our regular route service.

Much of the service Jack Rabbit provides is to small towns and rural communities in South Dakota—of which, as you know, there are many. I am committed to maintaining this service and do not want to be forced by economics to drop it. H.R. 3663, with its relaxed entry standards, will permit me to do this. However, if entry were totally open, I am afraid that there might be severe repercussions. Allow me to explain my apprehension of deregulated entry.

Currently, my profitable routes are cross-subsidizing my losing routes. The latter are, of course, the small urban and rural ones where there simply is not that much patronage. Open entry would permit any operator deemed to be "fit" to come in to my major routes and siphon off the percentage of my profits that I am using to support my lesser routes. In order to compete on my major routes, I would be forced to drop service.

I know that potential loss of service is of concern to all of you, particularly in those areas where intercity bus is the sole remaining means of public transportation. I assure you that I do not want to do this; I will not get out of a losing route so long as I can afford to cross-subsidize it.

The entry provisions now in H.R. 3663, Section 6, offer the protections that the public needs for assurance of continuation of service. These include, among others, a public interest test, consideration of the effect on small communities, and consideration of possible impairment of a regular route carrier's existing service. As a small independent carrier, I believe it is essential that these standards remain in bus reform legislation.

Senator **Danforth**. The next panel is: William McCracken of Greyhound, Theodore Knappen of Trailways, and Daniel Prins of Jefferson Lines.

Mr. McCracken, please proceed.

STATEMENTS OF WILLIAM L. McCRACKEN, SENIOR VICE PRESIDENT, GREYHOUND LINES, INC.; THEODORE KNAPPEN, SENIOR VICE PRESIDENT, TRAILWAYS, INC.; AND DANIEL PRINS, PRESIDENT, JEFFERSON LINES, INC.

Mr. **McCracken**. Mr. Chairman, I appreciate the opportunity to testify on this matter. I would say at the outset——

Senator **Danforth**. You are Mr. McCracken? Your names are switched.

Mr. **McCracken**. I am sorry.

I appreciate the opportunity to testify. Greyhound fully supports H.R. 3663. We believe it is a balanced approach and needed reform. I would like to briefly touch upon several aspects of the issues in the debate.

We recognize loss of service, the potential or the concern about loss of service to small communities is present. We would suggest that there are several factors that should lead you to conclude that this is not a problem to be concerned about.

H.R. 3663 has protections for small communities which frankly are not in the Motor Carrier Act today. The ICC will have more jurisdiction over questions of that matter than exist today, and that will be in the mode of reviewing the actions, or the unreasonable actions, I should say, of State regulatory agencies.

We have the experience, as Representative Sheldon said, in Florida. It has been a good experience. You cannot find anyone down there that is concerned that they do not have the service today. Actually, more people have more service today, I believe, than had it before.

Florida is not the only State where the legislature or the people have said, we can do without regulation. Arizona said it in a referendum, and that will take effect this summer. Wisconsin, the week before last the legislature voted there to do away with regulation this fall for buses and trucks. And the State of Alaska did it in 1980. So that this is not something that is untried.

A bus is a lot different than an airplane, too. When we are going from Kansas City to St. Louis, Mr. Chairman, we cannot fly over Columbia, Mo., knock it out as a stop, like an airline could. The incremental cost of serving an intermediate point is infinitesimal for the bus industry compared to an airline with landing fees, et cetera.

But most of all I would suggest, Mr. Chairman, that intrastate or State regulation actually inhibits service instead of preserving service. And I would use the example of your State, Columbia, Mo., 125 miles from both Kansas City and St. Louis. Those city pairs should be great bus markets: the right distance, high airline fares, high student population, good population at either end. They are lousy bus markets today and I will tell you why.

The fare that we are permitted to charge by the Missouri Commission from Columbia to St. Louis is $9. The comparable interstate fare for constructing a fare out of State is just about double that. As a result, if we are too successful in getting too many Columbia to St. Louis or St. Louis to Columbia riders on our buses, we are going to lose money.

We are being forced to sell that service at less than cost. And I would submit that if we could sell that service at a slight margin above cost you would all of a sudden see incentive to advertise, promote, discount, and do everything else that a business does when it wants to promote usage of its service.

But State regulation in almost every State of this country has come to symbolize an anticarrier, anticonsumer attitude, depriving people of service instead of stimulating service.

I would also suggest, Mr. Chairman, that as regulation exists today we are like the handcuffed fighter in the ring. The airlines are deregulated. The automobile, of course, is not regulated and never has been. And the railroads are not. We are now competing with airlines that advertise in the newspapers in recent months "cheaper than bus."

They can put those rates in on a moment's notice. We are confronted with up to 30 days to lower a rate to meet those rates on an interstate basis, and in many States a much longer period of time.

I would suggest that there is another aspect of State regulation that hurts us, and that is the ability to react to competition. Texas is an example. We cannot react to lower fares from Texas International Airlines because it takes over 60 days, with hearings, to get a rate increase or decrease in that State.

The State of Missouri again is an example. We operate at an operating ratio far in excess of 100 percent in that State. Yet, when we ask for a rate increase it can take and has taken in recent years anywhere from 160 to 210 days. In fact, I learned just recently that our company filed a rate increase in Missouri the last week in October of 1981. There will be a prehearing conference, not a hearing but a prehearing conference, in June of 1982. We are looking at in excess of a year to get a rate increase.

I submit to you and I submit to this subcommittee that regulation as it is practiced today, principally by the States, is anticonsumer.

Thank you.

[The statement follows:]

STATEMENT OF WILLIAM L. MCCRACKEN, SENIOR VICE PRESIDENT AND ASSISTANT TO THE CHAIRMAN OF THE BOARD, GREYHOUND LINES, INC.

Mr. Chairman and members of the subcommittee, I am William L. McCracken, senior vice president and assistant to the chairman of the board of Greyhound Lines, Inc. My office is in the Greyhound Tower, Phoenix, Arizona 85077. I have been employed by Greyhound for 16 years in legal and executive positions.

1. Greyhound Lines, Inc. supports the Bus Regulatory Reform Act of 1981, H.R. 3663, as the best regulatory reform proposal for the intercity bus industry

I appreciate the opportunity to appear before this committee. I would like to address several of the subjects you will be considering as you review the issue of intercity bus regulatory reform legislation. My purpose is also to discuss those considerations which we believe make regulatory reform a necessity, and to advise this committee that Greyhound Lines, Inc., joins with the American Bus Association in wholeheartedly supporting the Bus Regulatory Reform Act of 1981 (H.R. 3663) passed by the House of Representatives 305 to 83 on November 19, 1981.

It is our view that a meaningful reduction in regulation will produce a number of desirable results including greater efficiency, lower costs, more innovation, greater variety of service and price options, more flexible operations, and a greater responsiveness to the needs and desires of the traveling and shipping public, particularly as competitive market forces and carrier management replace bureaucratic decision making.

Regulatory reform for the intercity bus industry is an urgent necessity. None of our competitors, auto, air and rail, are subject to the oppressive hand of regulation. With deregulation of the airlines the marketplace in which bus operators compete has undergone a dramatic transformation. Airlines have in fact inaugurated major marketing and pricing initiatives designed to divert bus customers to air by advertising "cheaprer than bus". Airlines can change fares on a moment's notice while bus companies are subject to regulations which delay fare changes anywhere up to 30 days at the Interstate Commerce Commission and often months in the States.

This is merely an example of the reasons why a relaxation in regulation is an urgent necessity.

Intercity bus is a unique industry. Unique in the fact that it is the only intercity passenger mode subject to pervasive economic regulation. Unique in the fact that our operations are concurrently regulated by both the Federal Government and each of the State governments.

And unique because there is virtual unanimity within our industry that major relaxation of regulation is called for. Unlike other industries that have contained widely differing views for and against deregulation, we are united in seeking change in the form contained in H.R. 3663.

In this plea we do not stand alone. Deregulation has received the strong support of the U.S. Departments of Justice and Transportation, the Interstate Commerce Commission, a bipartisan House of Representatives 305 to 83, consumer groups including the Transportation Consumer Action Project, and State agencies such as the Michigan and California departments of transportation.

During recent months we have also seen overwhelming editorial support for bus deregulation insuch newspapers as the St. Louis Post-Dispatch, the Portland Oregonian, the New York Times, the Detroit News, the Kansas City Times, Huntington, W. Va., Herald-Dispatch, the Chicago Tribune, San Francisco Chronicle, St. Paul Pioneer Press, Albany, N.Y. Times Union, and the Omaha World-Herald. This clearly reflects a broad recognition that the time for regulatory reform of the bus industry has come.

II. Brief overview of Greyhound and the intercity bus industry at a crucial point in their development

Greyhound Lines is one of the leaders in the intercity bus industry. We commenced service nearly 70 years ago and grew both before and during regulation. We are proud of the fact that we have set the standard for excellence in our business. We are also proud that the entire intercity bus industry has benefitted from our pioneering efforts to improve equipment and service and to create a public awareness that intercity bus is an economical, safe, fuel efficient and convenient mode of travel.

Greyhound has been instrumental in the development and introduction of essentially every major advance in intercity bus transportation over the years, including air-conditioned buses, onboard restrooms, adoption of the diesel engine, on-the-road testing of turbine buses, safety-related programs such as our lights-on policy, the helping hand program which allows a handicapped person to be accompanied by a companion at no additional cost, nationwide toll-free information service for the Spanish speaking and a similar TTY system for the speech and hearing impaired.

In 1981 Greyhound averaged 17,714 employees on its payroll, of whom 15,510 or 88% were drivers, terminal and maintenance employees. Today we operate 4,285 buses, or less than 20% of those operated by ICC regulated carriers. Greyhound transports approximately 17% of the regular-route passengers transported by all ICC regulated carriers and 4% of the charter passengers.

Intercity bus today is at the threshold of what can be one of its greatest periods of service to travelers and shippers. I emphasize can be because I firmly believe that a major modernization of the economic regulatory system is a necessary precondition to such a future. I won't inundate you with numbers—other witnesses have provided you with an in-depth view of the nature, structure, and history of our industry, as well as an appreciation for our unsurpassed energy efficiency and the positive effects increased energy cost and concerns over availability of energy have had on our industry.

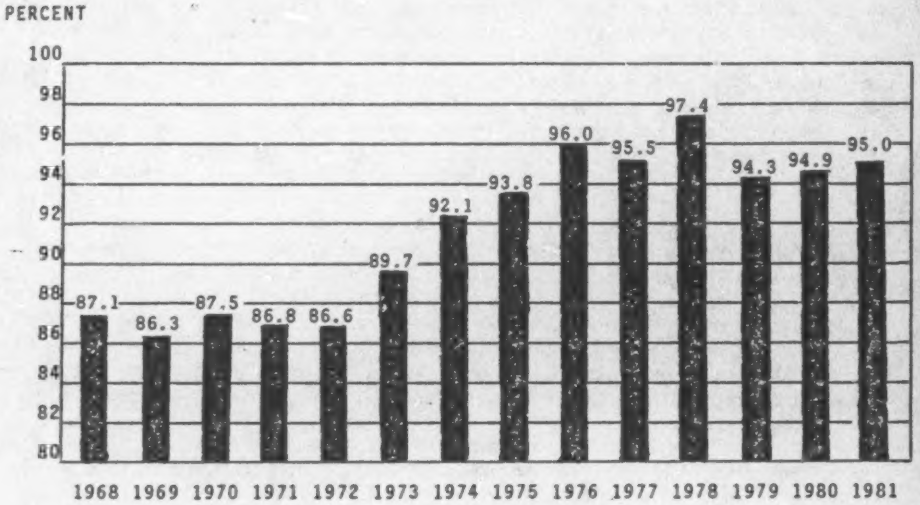
The late 1960's and the 1970's were a period of decline for our industry. This is true irrespective of the barometer used. Passengers and passenger miles were constantly declining; localities served by our industry declined 16 percent between 1969 and 1979; and each of the measurements of financial performance worsened.

April 1979 saw a reversal from which we continue to benefit. When gasoline became restricted in availability and then rapidly escalated in price we saw an immediate resurgence in intercity bus travel which continued into early 1981.

Several cautionary notes are in order. First, the latter part of 1981 reflects a decline in scheduled passenger traffic compared to 1980 as well as 1979. And the added traffic the fuel crisis produced did not bring us up to the levels we had experienced in many of the years prior to 1975. In addition, the financial condition of our industry, while improving, remains at depressed levels. In fact, for class 1 carriers (ICC regulated carriers with revenues over $3 million annually) operating margins, return on equity and return on investment in 1980 were barely half what they were in 1971 and data for 1981 reflects a decline from 1980 results.

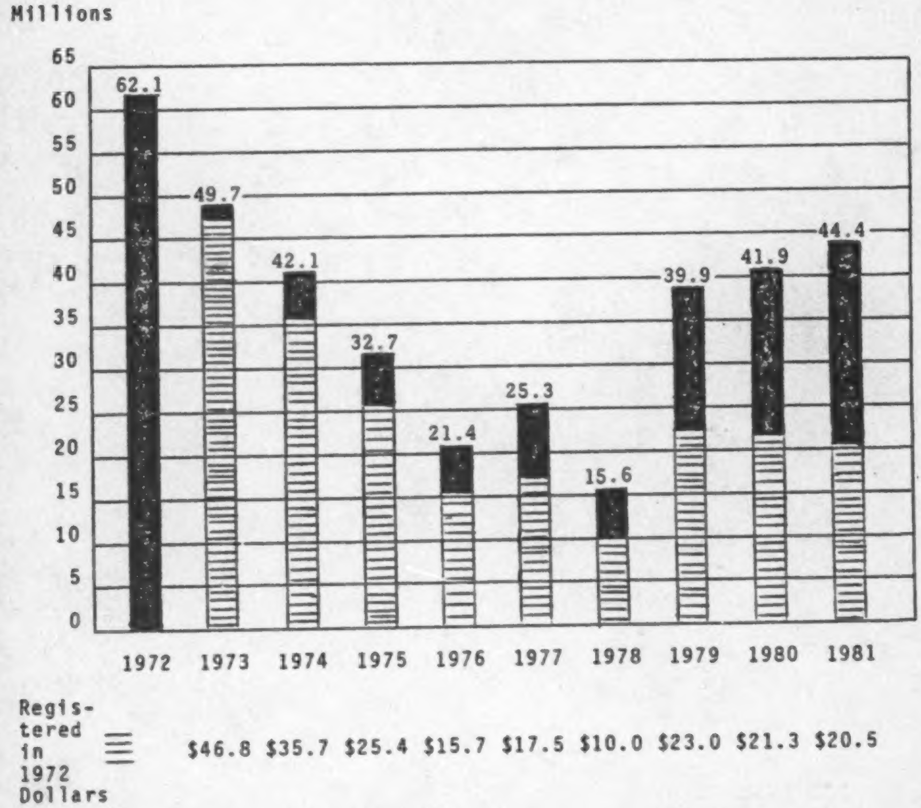
The following table reflects Greyhound's operating ratio (expense as a percent of revenue) from 1968 through 1981. Although 1979 and 1980 reflect improved results neither year approached the 14-year average of 91.6 percent.

GREYHOUND LINES, INC.
OPERATING RATIO
1968-1981



When operating income is stated in constant dollars the picture is bleaker.

GREYHOUND LINES, INC.
COMPARISON OF NET OPERATING INCOME
1972-1981



In 1980 gasoline availability ceased to be a problem we did not repeat our experience of the fuel crisis of 1973-1974, where passenger traffic immediately declined to pre-crisis levels when fuel was again available. There are several major reasons. An important one is the price of gasoline. Fuel cost for the motorist is up over 50 percent in two years. This contributes to a situation where intercity bus is the most economical means of travel for many persons.

Another factor is the investment in equipment and facilities that many carriers made during the 1970's because they believed, as we did, that there would be a return to bus travel as the economy of our mode and its fuel efficiency became known, *if* our equipment and service was first-class. At Greyhound we invested more dollars in recent years in buses, terminals, and maintenance facilities than we earned. The following table reflects Greyhound's earnings and operating equipment investment in the 10 year period between 1972 and 1981. Reinvestment exceeded net income less dividends in each year. The average shortfall was $29,686,000 and the aggregate $296,863,000 during the last 10 years. Reinvestment exceeded even pre-dividend income by $107,980,000.

GREYHOUND LINES, INC., SHORTFALL OF INCOME TO MEET INVESTMENTS IN OPERATING PROPERTY

[In thousands of dollars]

Year	Operating income	Income and income deductions	Income before taxas	Net income	Less dividends	Net income available for reinvestment	Reinvestment of income			Shortfall of income to meet investment
							Revenue equipment	Other operating equipment	Total	
1972	62,125	2,624	64,749	38,157	24,200	13,957	26,257	6,241	32,498	18,541
1973	49,740	6,279	56,019	35,402	22,000	13,402	24,492	4,609	29,101	8,793
1974	42,132	11,505	53,637	31,095	19,600	11,495	18,041	5,102	23,143	11,648
1975	32,735	14,601	46,796	31,488	18,960	12,528	37,036	9,441	46,477	33,949
1976	21,056	8,666	29,722	23,190	12,500	10,690	41,847	9,094	50,941	40,251
1977	25,272	7,763	33,035	24,872	10,000	14,872	46,398	4,611	51,009	36,137
1978	15,605	8,494	24,099	18,741	14,400	4,341	39,940	2,689	42,629	38,288
1979	39,931	12,093	52,024	35,928	12,959	22,969	42,117	6,339	48,456	25,487
1980	41,928	22,545	64,473	49,954	27,868	22,086	52,107	7,402	59,509	37,423
1981	44,462	24,108	68,570	46,714	26,396	20,378	52,946	6,872	59,818	39,440
Total				335,601					443,581	296,863

III. Intercity bus is on the threshold of great gains and improved service, particularly if meaningful regulatory reform occurs

Why is Greyhound optimistic about the future? There are a variety of reasons, some of which are expanded upon in this statement. In summary, they include the following:

(1) Our belief that regulatory reform will come when this committee and others involved in the legislative process understand the need for that reform and reflect upon the positive results, for both carriers, passengers and shippers, of the Florida experience where all economic regulation of buses and trucks terminated on July 1, 1980.

(2) Our experience since April 1979 reflects our ability to attract additional customers by providing new, well-maintained equipment, clean and attractive terminals, and well-trained employees. We believe that bus travel has become a more acceptable means of travel and that bus travelers are coming from a larger portion of the population.

(3) A contributing factor to increased bus usage has been gasoline unavailability and increases in price. We believe the latter will continue to be a factor and the former may recur from time to time.

The above expressed optimism is conditioned in very major part upon reform of the regulatory framework in which we presently operate. Regulation as we know it today has not been a contributor to whatever success we have achieved. In fact, I believe it fair to say that regulation has inhibited innovation, stifled experimentation, precluded flexibility, and generally deprived both carrier and customer of the benefits that flow from free competition. And in so doing regulation frankly has become a security blanket for many. It insulates managers from the chill winds of the free marketplace. It provides a readily available excuse for the absence of imaginative programs and invigorating marketing. How often have we heard, "The commission won't let us do it", or "One of the commission staff advised years ago that there is a rule aginst it", or "It could take years with hearings and all that", or "There is no competitive advantage because under the rules other carriers will have time to meet our price, so why do it?"

I referred at the outset to our belief that regulatory reform is a vital necessity. Absent such reform we don't believe that intercity bus can grow and offer the public the fuel efficient, economical, flexible, and customer responsive service it demands.

IV. Two unique aspects of the intercity bus industry are impediments to improved, customer responsive service

When we view intercity bus regulation in a broader context, we find it to be the victim of discrimination in two key respects. First, intercity bus is the *only* form of intercity passenger transportation that is subjected to meaningful economic regulation. In fact, the regulatory scheme is unbalanced and oppressive and represents an effort by bureaucrats to usurp managerial prerogatives. Second, our operations are concurrently regulated by the ICC at the federal level and by a state agency or commission in each of the states (except in Flordia) in which we operate. No other form of intercity passenger transportation shoulders this dual and frequently conflicting regulatory burden.

A. INTERCITY BUS IN THE ONLY FORM OF PASSENGER TRANSPORTATION SUBJECT TO ECONOMIC REGULATION

As regulation of our industry is presently practiced, intercity bus becomes the odd-man-out of intercity passenger travel—no other form of intercity passenger travel is subject to pervasive economic regulation. 98% of intercity travel is unregulated, while intercity bus, with less than 2%, continues to be subjected to all encompassing and often irrational regulation. The automobile which has 82.9% of the intercity passenger market is obviously free from all economic regulation. Our next largest competitor—the airlines—have 13.7% of the market. Economic regulation of that industry is virtually a thing of the past. Amtrak is free to do as it wants subject only to political oversight.

And lastly I want to draw your attention to some competitors we often forget. These are government and social service intercity bus and van services, unregulated by either the ICC or the state commissions; the public transit operators which have expanded into intercity service; and, of course, the ever present unpoliced illegal operators.

In states which have surveyed the situation, we find public unregulated carriers represent a sizable percentage of the combined private-public carriers serving the general public. And the number of specialized unregulated carriers is at least ten times greater than private regulated carriers.

Let me give you some examples which describe the scope of these unregulated services.

In California, intercity bus service to rural communities is provided by 25 private-regulated carriers and 48 unregulated government or government-funded operators, all of which serve the general public. In addition, over 600 unregulated public or private operators serve limited segments of the public such as the elderly and the handicapped. Parenthetically, I would note that those two groups are major users of intercity bus service. Thus, such unregulated operators compete directly with us.

A similar situation is apparent in other states which have catalogued this type of information, such as Iowa, North Carolina, New York, Oregon, Pennsylvania and Tennessee.

State	Number of carriers		
	Private regulated	Private unregulated	Specialized unregulated
Iowa	31	33	[1] 250
North Carolina	31	15	[1] 500
New York	90	34	[1] 1,000
Oregon	11	19	[2] 60
Pennsylvania	72	35	[1] 250
Tennessee	20	13	[2] 220

[1] Estimated.

[2] Actual.

B. INTERCITY BUS IS REGULATED CONCURRENTLY BY BOTH FEDERAL AND STATE AGENCIES

I referred earlier to the existence of two concurrent levels of economic regulation. The scheduled intercity bus you see on the highway is authorized to transport, and does in fact transport, a mixture of interstate and intrastate passengers and packages. Thus, two levels of regulation are involved, at the same time, in pricing, service, schedules, etc.

Our experience with state regulation has generally been negative. Too often state regulation has been unnecessarily burdensome, anti-competitive, a product of local politics, and an effort to substitute bureaucratic judgment for managerial expertise.

This stands in stark contrast to the perception of state regulation of the airlines before deregulation of that industry in 1978 preempted state jurisdiction. Only a few states—principally, California, Texas and Florida—engaged in substantive regulation of airlines and in those states regulation was viewed as enlightened, non-burdensome, and procompetitive. So much so, that the experience, particularly in California, was often held up to view as proof of the benefits of less regulation.

Congress nevertheless saw fit to totally preempt state jurisdiction because of a fear that the states could hinder the implementation of a policy of lessened regulation and increased competition.

V. The only solution is federal direction requiring state adherence to uniform policies and practices or federal preemption

Based on our experience, we know that truly meaningful and effective regulatory reform of the intercity bus industry can only occur if such legislation simultaneously reduces state jurisdiction over carriers which are engaged in interstate operations. Absent such preemption, federal legislative objectives will be greatly frustrated by state action and in the end will be largely ineffective.

In fact, a system of federal reform but continued state regulation, either uniformly or more than likely on a piecemeal and highly inconsistent state-by-state basis, would weaken the industry and produce chaos in the amount and nature of service.

The solution is obviously preemption of state regulatory jurisdiction to such a degree that Federal regulatory reform policies will not and cannot be frustrated. This solution is not new, untried, nor unique. Preemption of state jurisdiction over rail service has existed for years and has been increased in recent years, particularly in section 214 of the Staggers Rail Act of 1980. The Airline Deregulation Act of 1978 explicitly deprives states, their agencies, and subdivisions of authority over intrastate rates, routes and service of carriers also providing interstate air transportation.

An example shows the dire consequence of Federal free entry and continued state regulation. Between New York City and Chicago, a bus company handles, on the same bus and at the same time, passengers in interstate commerce—those crossing a state line in their journey—and intrastate travelers—those whose total journey is within New Jersey, or Pennsylvania, or Ohio, or Indiana. The interstate traffic is generally more profitable. With relaxation of regulation at the Federal level, one or more carriers would be free to offer service to interstate travelers and to change service, schedules and fares. The interstate-intrastate carrier would not be able to respond because the state regulatory agencies would, as they do today, exert comprehensive regulatory restraint over service, schedules and fares. The state agencies would reject efforts to reduce schedules because of a concern about service for intrastate passengers. The agencies, as they have done historically, would act similarly with respect to service and rates.

Now the profitable subsidizes or makes feasible the unprofitable. When the financial results on the former deteriorate as they may with greater competition, a carrier in a totally free environment would raise fares or reduce service, or both. But it would not be able to raise fares on the interstate traffic because of competition, and it would be unable to raise fares or to reduce intrastate service because of continuing state regulatory restraint. Thus, absent preemption, the existing carrier providing intrastate service would be placed in an untenable position.

The inequity and impropriety of such a system is obvious. The solution is preemption! We do not know of any reason why interstate passengers should be made to pay more and should be penalized to favor the intrastate passengers. Indeed, in the long run intrastate passengers will get more and better service if carriers are given the freedom and flexibility to provide the most economically rational type of service.

A. THE PRECEDENTS FOR FEDERAL PREEMPTION

Preemption is far from new or unique. For many years state jurisdiction over certain rail matters has been curtailed or subject to ICC primary.

The Airline Deregulation Act of 1978, which I previously referred to, specifically deprives states and their agencies and political subdivisions of authority over the intrastate rates, routes and service of carriers also providing interstate air transportation.

In the Staggers Rail Act of 1980, Congress established a program whereby those states which comply with ICC established policies for the processing and approval of rate changes may retain jurisdiction over intrastate rail rates.

Everyone who supported bus deregulation during the House deliberations acknowledged that absent preemption the benefits of deregulation would remain unrealized.

VI. State regulation is increasingly unable to fulfill its responsibilities without injury to carriers and the public

Substantial evidence was received during the House hearings. On H.R. 3663, depicting the unresponsiveness of state regulation. It reflected a pervasive failure of state regulation to regulate in an equitable manner. The House Committee Report in fact concluded that a major factor in the financial decline of the intercity bus industry has been oppressive state regulation.

A. RATE INCREASES AND DECREASES CANNOT BE OBTAINED IN A TIMELY MANNER

In a recent study, the decline of service in the regulated industries, (American Enterprise Institute, 1981) Carron and Macavoy express the view that declines in utility and transportation service and deterioration in their financial condition are a result of the inability of regulatory systems to adjust to changing economic conditions.

The phenomenon described by Carron and Macavoy is not unique to the utilities and transportation modes they studied. Greyhound has also experienced a worsening in responsiveness of state regulators to demonstrated revenue needs.

I would direct your attention to the state of California which accounts for 17.3% of Greyhound's total nationwide annual passenger revenues. 60% of that revenue, or 10.3% of our nationwide revenue, is intrastate in nature and thus subject to the jurisdiction of that state's Public Utilities Commission. In 15 years ending in 1980, we filed twelve general fare increase applications. There were four in each five-year period, 1966–1970, 1971–75, and 1976–80. The average time that elapsed between filing and the effective date of the authorized increase escalated from 161 days during 1966–1970, to 184 days during 1971–1975, and eventually to 242 days in the period since 1975. Over the course of these three successive five-year periods, we have seen a 50% increase in the time it takes to process our applications. The reason is not any lessening in the amount of the request granted; in fact, in the last period, each of our four increases was approved in its totality and the last two had no opposition and the PUC scheduled no hearings. But these two consumed 359 and 245 days each, longer than any previous ones. Such delays are not merely unwarranted. They are costly. This is particularly critical when California intrastate operations, although passenger revenues now exceed $60,000,000 annually, have rarely been conducted at a profit in the past fifteen years.

Is it surprising then that we support preemption of state jurisdiction over intrastate ratemaking? If the ICC can review and act on a nationwide fare increase for 400 bus companies in 45 days, why does a state take 200, 300, or even 359 days to act on the request of one carrier, only eventually to grant it as filed?

Our experience in California is unfortunately not unique. Between 1975 and 1980 Greyhound filed intrastate general rate increase applications on 147 occasions in 44 states. While 15 states commendably acted on filings in a maximum of 45 days, similar to the ICC, the remaining 29 states averaged 152 days. Six states, in fact, averaged over 200 days, the range being from 205 to 355 days.

A similar difficulty arises when we institute short term discount promotional fares. Some states require hearings and other regulatory processes which effectively deny us an opportunity to offer reduced promotional fares to intrastate travelers.

B. STATE REGULATION OFTEN REQUIRES CONTINUATION OF UNECONOMIC AND UNNEEDED SERVICES

Our unsatisfactory experience with state regulation is not confined to the pricing area. The states exercise pervasive regulation over service, schedules and abandonments.

Anyone experienced in the intercity bus industry could offer a litany of examples of state regulatory action running the gamut from the petty bureaucratic to regulation run amuck.

Recently one state announced that any schedule change would require an oral hearing. In other words, a five-minute schedule adjustment to increase meal-stop time, or the addition of more schedules, or schedule increases for summer and reductions for winter would be subject to a time-consuming hearing process. The result of such a policy—schedule changes wouldn't be made or they would be authorized long after the date when they should logically occur. One could visualize increased summer service authorized at the end of the summer!

A number of years ago we added service on a western route to serve increased summer traffic. This is a common event since a higher portion of our passengers travel in June, July and August than any other three-month period. In the normal course, we notified the various states that the additional service would be removed after Labor Day. One state, however, refused to allow this change. The result—costly administrative procedures to remove the unneeded service and a reluctance on our part to repeat the experience in subsequent years.

Repeatedly over the years we have been required by state regulators to operate service for which there is absolutely no economic justification nor public need.

In a large southern state the regulatory agency has repeatedly refused the requests of various carriers to reduce service on routes where schedules were averaging 1 to 5 passengers per trip. For comparative purposes, large carriers use a rule-of-thumb that 18 to 21 passengers is a break-even point. In this state a separate operating certificate was issued for each route a carrier operated. Several years ago it was determined that while a carrier could be refused permission to change or reduce service, the state agency could not prevent a carrier from surrendering a certificate and thus cease all service on the route. In recent years carriers have surrendered numerous certificates in that state. Did the public benefit? Obviously not.

VII. State regulation requires interstate passengers to subsidize intrastate passengers

An area of grave concern is the fact that intrastate fares almost without exception are lower than interstate fares for the same distance traveled. This is a result of the exercise of state jurisdiction in a manner to keep local fares low. The following tables reflect intrastate fares as a percentage of comparable interstate fares as of February 13, 1982. The first table is alphabetical by state and the second in ascending percentage order.

The disparity between intrastate and interstate fares is obvious. The average intrastate fare for the 47 states in which Greyhound provides intrastate service is 66% of the comparable interstate fare. Only one state in fact allows intrastate fares equal to or greater than interstate fares.

Greyhound Lines, Inc., intrastate rates as a percentage of comparable interstate rates

Alabama	66	Montana	46
Alaska	(1)	Nebraska	55
Arizona	55	Nevada	50
Arkansas	56	New Hampshire	68
California	65	New Jersey	(2)
Colorado	47	New Mexico	61
Connecticut	62	New York	48
Delaware	73	North Carolina	61
Florida	83	North Dakota	60
Georgia	63	Ohio	70
Hawaii	(1)	Oklahoma	58
Idaho	62	Oregon	70
Illinois	65	Pennsylvania	76
Indiana	82	Rhode Island	73
Iowa	63	South Carolina	80
Kansas	70	South Dakota	57
Kentucky	83	Tennessee	63
Louisiana	52	Texas	59
Maine	111	Utah	51
Maryland	74	Vermont	76
Massachusetts	77	Virginia	78
Michigan	62	Washington	69
Minnesota	71	West Virginia	87
Mississippi	74	Wisconsin	52
Missouri	50	Wyoming	56
		Average	66

[1] No Greyhound service.
[2] No Greyhound Interstate service.

Greyhound Lines, Inc., intrastate rates as a percentage of comparable interstate rates

Montana	46	California	65
Colorado	47	Illinois	65
New York	48	Alabama	66
Missouri	50	New Hampshire	68
Nevada	50	Washington	69
Utah	51	Ohio	70
Louisiana	52	Kansas	70
Wisconsin	52	Oregon	70
Arizona	55	Minnesota	71
Nebraska	55	Delaware	73
Arkansas	56	Rhode Island	73
Wyoming	56	Maryland	74
South Dakota	57	Mississippi	74
Oklahoma	58	Pennsylvania	76
Texas	59	Vermont	76
North Dakota	60	Massachusetts	77
New Mexico	61	Virginia	78
North Carolina	61	South Carolina	80
Connecticut	62	Indiana	82
Idaho	62	Florida	83
Michigan	62	Kentucky	83
Georgia	63	West Virginia	87
Iowa	63	Maine	111
Tennessee	63		

In actual fact what does this mean? In Missouri it means the intrastate one-way fare between St. Louis and Columbia is $9.05 while the interstate fare, used to construct a fare to a point in another state, is $17.85. While St. Louis-Columbia is a natural bus market—125 miles, natural city pair, high student population, time in transit competitive with air, and a $68.00 air fare—the depressed intrastate fare inhibits any desire on Greyhound's part to market and promote the service. Because if we were successful in putting a large number of St. Louis-Columbia passengers on our buses we would lose money. In essence state regulators deprive the public of service by mandating fares which are below the cost of providing the service.

The nation is filled with similar examples where state regulation acts as a barrier to improved service.

New York City to Albany is also a natural bus market. Greyhound and Trailways offer 27 schedules daily in each direction. But because the state of New York has held intrastate fares to less than one-half the interstate level, everyone of those schedules operates through New Jersey and thus serve only the west side of the Hudson river. The numerous communities on the east side of the Hudson are deprived of service because to operate on the east side would be to sell New York City-Albany at the intrastate fare level. No matter how successful an east bank operation was, from a standpoint of number of passengers, it would be conducted at a loss.

Whether viewed in the long or short run a state agency ill serves its citizens when it pursues a policy of depressed intrastate fares. First, while a constituent benefits in the short run from the depressed intrastate fares. First, while a constitutent benefits in the short run from the depressed lower fares, when he or she travels out of state the fare paid is inflated to subsidize the local ticket.

Secondly, the carrier forced to operate at a depressed intrastate rate scale will have no incentive to maintain or improve service. In point of fact, its energies will be devoted to reducing, if not terminating, service, all to the loss of the bus rider.

VIII. State regulation is not needed to insure continuation of service

We recognize that state agencies feel that only they can protect their citizens against loss of service, and particularly against losses which they believe will flow from regulatory reform. It is laudatory that they desire to protect the public against the assumed impacts of free market competition.

However, recent experience supports the view that such protection is neither sought nor needed by the traveling and shipping public.

A. ARIZONA REFERENDUM FOR TOTAL DEREGULATION

In November 1980 Arizona voters approved a referendum which totally deregulates buses and trucks on July 1, 1982. In spite of a heated campaign which included dire warnings that small towns and rural areas would be abandoned, urban and rural voters alike voted overwhelmingly for deregulation.

The following tables provide dramatic evidence of the strong commitment rural residents (in some of the least densely populated counties in the U.S.) gave to total deregulation of bus and truck.

ANALYSIS OF VOTES BY COUNTY ON PROPOSITION 101

County	Yes	Yes	No	Population	Square miles	Population [1]
Apache	5,425	62.70	3,222	32,304	11,170	2.89
Cochise	13,010	63.43	7,502	61,918	6,256	9.90
Coconino	15,102	63.82	8,562	48,326	18,540	2.61
Gila	6,854	57.96	4,972	29,255	4,748	6.16
Graham	3,908	57.27	2,916	16,578	4,618	3.59
Greenlee	1,471	43.55	1,907	10,330	1,879	5.50
Maricopa	312,804	70.47	131,067	971,228	9,155	106.09
Mohave	11,157	64.57	6,122	25,857	13,217	1.96
Navajo	8,548	59.74	5,758	47,559	9,910	4.80
Pima	111,789	66.85	55,424	351,667	9,240	38.06
Pinal	12,787	62.39	7,709	68,579	5,364	12.79
Santa Cruz	2,413	67.44	1,165	13,966	1,246	11.21
Yavapai	17,555	67.63	8,402	37,005	8,091	4.57
Yuma	12,100	65.25	6,445	60,827	9,983	6.09
Arizona	534,913	68.05	251,173	1,775,399	113,417	15.65

[1] Per square mile.

ANALYSIS OF POPULATION DENSITY AND PROPOSITION 101 VOTE

Arizona county	Population per square mile	Percent yes vote on proposition 101
Mohave	1.96	64.57
Coconino	2.61	63.82
Apache	2.89	62.70
Graham	3.59	57.27
Yavapai	4.57	67.63
Navajo	4.80	59.74
Greenlee	5.50	43.55
Yuma	6.09	65.25
Gila	6.16	57.96
Cochise	9.90	63.43
Santa Cruz	11.21	67.44
Pinal	12.79	62.39
Pima	38.06	66.85
Maricopa	106.09	70.47
Arizona	15.65	68.05

B. FLORIDA TERMINATED ALL REGULATION, JULY 1, 1980

Under the "Sunset" law of Florida all economic regulation of buses and trucks ended on July 1, 1980. Thus today, and since July of 1980, there is no intrastate regulation of entry, exit, prices, schedules or service. The free market prevails in its most pristine form.

The Florida Chamber of Commerce recently polled its members and found that 44% believed bus deregulation had a positive effect on their communities; 9% negative; and 43% saw no effect.

C. DEREGULATION IN OTHER STATES

The Alaska legislature totally eliminated economic regulation of intercity bus service in 1980. We have been advised by regulators in that state that deregulation occurred smoothly and no adverse experience has resulted.

Wisconsin is shortly expected to enact legislation incorporating near total deregulation which would be effective on October 1, 1982.

Sunset laws presently provide for total deregulation, absent legislative intervention, in Kansas—July 1, 1982; Tennesse—July 1, 1982; Montana—July 1, 1983; South Carolina—July 1, 1983; Colorado—July 1, 1983; and Texas—September 1, 1983.

IX. Less regulation will not result in unacceptable loss of service

The gloom and doom prophets who foresee wholesale service reductions as a consequence of regulatory reform fail to reflect on the real world and recent experience.

First, the bus industry retrenched as traffic declined from 1969 to 1979, by eliminating 1,850 service locations, or 16% of locations serve nationwide. Not only has this resulted in a leaner, more efficient industry, it shows that even with pervasive exit restrictions, withdrawal from uneconomic routes does occur, although at unnecessarily high costs to the unfortunate carrier. Continuation of current practice is unlikely to prevent eventual withdrawal, all it will do is discourage entry.

Second, the actions of Arizona, Alaska and Wisconsin are clear evidence that rural areas—supposedly those who should fear loss of service—are confident that they will actually benefit from less regulation.

Third, the Florida experience shows that the service loss, even with total deregulation, is minimal and need not be a concern.

Lastly, I would point out that those who raise the spector of "loss of service" conveniently fail to define their terms. If service was previously available once a day, on a local multistop bus, at a roadside stop, five miles from a person's residence and it now is provided several times daily at a bus terminal where buses are available, but is nine miles from the residence, has service been lost? It is clear that service has improved, not deteriorated. Moreover, as the bus does not now stop at every door, bus passengers, including the poor and elderly, must use other forms of transportation to and from bus stops. While intercity bus is the most flexible of all forms of public intercity transportation, it should not, and is not, conceived of as being a door-to-door taxi service.

The loss of service issue is often confused by referring to airline deregulation. It is confused because the bus and airline industries are vastly different. Bus lines depend more heavily on rural and small communities for passengers than airlines ever did. Airlines can fly over entire States and regions without landing. A bus follows the highway, and if there are people who want to ride, it makes sense to stop for them. Airlines require a sophisticated and expensive ground support system. Buses can go wherever there are roads and even pick up and leave passengers at roadside stops. The incremental cost for a bus to stop at an intermediate point is insignificant while that for an airline is substantial.

In fact, buses can help take up the slack created by air cutbacks by providing ground connections to the nearest airport.

It is also important to remember that it is vastly less expensive to start a new bus operation than a commuter airline. This fact, combined with the enlightened entry provisions in H.R. 3663, will work to encourage new service in communities where a carrier might reduce service.

Critics also fail to note that the service most likely to be terminated is service that is unneeded and unused. A prime example is the ICC requirement that carriers holding pre-1966 certificates can only provide charter service if they operate a regular-route scheduled service. The result—once-a-week schedules that rarely see a passenger. The end of this operation is clearly not a loss of service. The ICC similarly requires a carrier to continue to serve the "old road" if it uses the interstate highway. The "old road" often, particularly in the West, is often very circuitous and has no contiguous population.

It is logical to assume that with regulatory reform, particularly more reasonable State regulation of rates and exit, the likelihood of improved service is far, far greater than reduced service.

And lastly we would point out that H.R. 3663 contains a number of safeguards to assure that small communities are served.

X. The ICC proposal to study terminals is unnecessary

Greyhound opposes the proposal of the ICC that it and the Department of Transportation study bus terminals. The American Bus Association bill (S. 926), which represents the consensus of the entire bus industry, small carriers as well as large, has no such provision. It seems incredible that the ICC should in one breath urge a substantial lessening in regulation and then in another propose congressional sanction for a wasteful, bureaucratic make-work project possible calculated to lead to new and more oppressive regulation. It is fair for the Congress as well as the bus industry to ask why, if a terminal study would be of any value, the ICC has not undertaken one before this? Could it be because no problems exist or are even foreseen with respect to terminals? As the saying goes, "if it ain't broke don't fix it." After all, it has been 47 years since the passage of the Motor Carrier Act of 1935. It is very difficult to escape the conclusion that some professional students are fishing around for something to keep them busy. Such a project would, however, not only waste the taxpayers' money, but it would also constitute an unnecessary and burdensome imposition upon the people in the bus industry during a time of radical change. The burdens of such a study would generate uncertainty as to the future and make illusory for a year and a half or more most reductions in other types of regulatory burdens. What kind of plans and commitments, particularly those involving capital, can carriers make if some new and unknown form of regulation hangs over their heads?

It may very well be that a review of the progress of the bus industry under regulatory reform similar to that which Congress intends with respect to the airline and trucking industries would be appropriate. Should Congress wish to undertake an examination of these matters, it can be assured of Greyhound's cooperation. I hardly think, however, that one can legislate in advance and in minute detail for a dynamic industry and a dynamic situation. Likewise, I hardly think a study made of today's terminals by the ICC of the Department of Transportation, before regulatory reform is even fully implemented, will provide a reliable indication of the significance of terminals to the longer term prospects of this industry.

XI. Impact of rate flexibility

The rate flexibility provisions of H.R. 3663 would give the bus industry greater than at present flexibility. Flexibility would contribute to a healthier bus industry and its ability to insure adequate service.

When regulatory reform is discussed, the question is asked whether there isn't a great risk that with rate flexibility, Greyhound and others may reduce their prices and drive out smaller competitors?

By way of respnse, I would say that Greyhound doesn't dominate or control the bus business. As I have indicated, out of all scheduled service by ICC regulated carriers, Greyhound transported 17% of the regular route passengers and 4% of Charter passengers. Greyhound faces tough competition from a number of other bus companies whose costs are much lower than ours. Any serious price cutting will more likely come from the competition who will be trying to get more business. More likely it will be Greyound that will have to meet the fares of its competitors.

Any predatory pricing strategy on Greyhound's part would be foolish, if not suicidal. Predatory pricing can only be successful in an industry with high entry barriers where new companies can't easily come in after competitors leave. Since entrepreneurs can successfully enter the bus industry with a small capital investment, it would be foolish for an established firm to try to price its existing competitors out of the market. If a bus company could drive its competitors out of business by sustaining losses in the short run, it would never be able to recoup those losses, because new firms would enter when the company tried to raise its prices above a competitive level.

Furthermore, the Federal Trade Commission studied this prospect and found that the intercity bus industry, given its economic characteristics, was not susceptible to destructive rate wars.

Conversely, a question is asked whether deregulation won't create a windfall to Greyhound and others by letting them raise their rates across the board.

The answer is that competition prevents them from doing that. Existing carriers are faced with vigorous competition not only from other bus companies where costs are lower—but also from other transportation modes including automobiles, airlines, Amtrak and transit systems. The public is quick to compare the prices of alternative forms of transportation and anytime we raise our fares we risk the loss of business to others. Competition, both from within the bus industry and from other modes of travel, will effectively govern our prices.

This competitive marketplace bears close attention. It consists not only of bus but also air, rail and auto. These are all alternatives that travelers evaluate in selecting a mode to use. Bus competition involves 1,300 ICC licensed carriers and untold others operating wholly within one State; under statutory exemptions; and in the private sector (school, church, etc.). While Greyhound and Trailways operate nationwide and have approximately equal route networks of 100,000 miles each, many other carriers have very strong and successful regional and multistate networks. In the fastest growing aspect of the bus business—charter, tour and sightseeing—competition is already intense. Large cities are often served by 20, 30, and even more carriers. Deregulation in Florida saw a substantial upsurge in carriers offering this service with a resulting high level of service and price competition as well as a wide diversity of price and service options. In those States that have effectively deregulated the charter business in recent years the same experience has occurred.

The auto with 82.9% of intercity travel, is obviously the bus industry's major competitor. This fact is the simple justification for Greyhound's decades old advertising slogan—"Go Greyhound and leave the driving to us."

Rail and air are also part of the competitive market. Amtrak pricing strategy clearly is aimed at diverting bus passengers. The average length of ride for Amtrak and bus are similar—200 miles.

Airlines have of late engaged in active efforts to position air travel as an attractive alternative for bus passengers. This is exemplified by the fare promotion last month of one airline that it was "cheaper than bus". When other airlines announce they will meet all air fares, it is clear that the bus industry is part of an expansive competitive market.

XII. Conclusion

In conclusion, I would like to emphasize *three* points.

First, intercity bus has greater potential to serve this Nation today than at any time in the last 20 years. Its fuel efficiency and operational flexibility are unsurpassed. In an era when fuel is becoming ever more costly and its availability increasingly uncertain, we need a strong intercity bus system.

Second, it should be Federal and State policy to take all steps necessary to ensure that intercity bus remains a function of the private sector and that government usurpation of managerial prerogatives is held to the barest minimum. The best path to a strong, private enterprise bus industry—offering quality service at a fair price—is the elimination of unnecessary and burdensome government regulation. This objective would be achieved by H.R. 3663 which we urge you to adopt.

And third, regulatory reform should encompass explicit direction from Congress that the law must be implemented as written and intended by Congress, and not viewed by activist commissioners as a mere jumping-off point for the application of new theories.

Recent experience shows the radical swings the commission can take as membership and philosophies change. Those who are regulated are entitled to, and demand, more certainty and predictability in regulatory policy. The job of a carrier manager is unnecessarily complicated when regulation is subject to radical and sudden change, as has occurred at the ICC in recent years.

I hope I have effectively conveyed our disenchantment with the current regulatory environment of our industry and the rationale for our advocacy of meaningful legislation to substantially lessen economic regulation.

In short, we'd like an opportunity to run our business on the basis of business judgments—not bureaucratic fiat!

Senator **DANFORTH**. Mr. Knappen?

Mr. **KNAPPEN**. Thank you, Mr. Chairman.

We also support H.R. 3663, and the main reason we do is that there is a real problem, and the problem is that we simply are not allowed to manage our companies under the present regulatory system with regard to the major components of regulations: entry, exit, and rates.

The two major issues here are well balanced in H.R. 3663 between the need for regulation and the need to make sure that the public does not suffer. The No. 1 area is the reduction of entry controls, along with a concomitant reduction in exit control. The No. 2 area is relaxed rate controls and reduced antitrust immunity. Those are the two key areas of the bill.

Now, with regard to entry controls, the most irrational parts of entry regulation are removed. For example, the closed door restrictions, many of which exist at the intrastate level on interstate routes, would be stricken. For example, right now, Senator, we have a bus that runs from St. Louis through Cape Girardeau to Memphis, and stops in Cape Girardeau. But we cannot pick people up in Cape Girardeau and take them to St. Louis or vice versa.

We have had an application pending to simply open our doors on this route that we are already running with the Missouri Commission for roughly 18 months. The hearing was completed 10 months ago and no decision has been rendered. This bill would allow us to appeal such a delay or a negative decision to the ICC, and I think with more rational results.

At the same time, it protects the small carriers by providing that an application of a large carrier will not be granted if it will wipe out the regular route structure of a small carrier. Lieutenant Governor Hansen's example is right on point, and I think he covered that well.

Now, Secretary Lewis and other witnesses have suggested that we should go further on entry and in effect have total free entry. If you do that, you would also have to have totally free exit. Otherwise, nobody would ever choose to come into a market where if they build up a market everybody else could file over them, but if they could not build it up they could not get out.

So you would have to have totally free exit, and that is where you would have your problem with regard to your small communities losing service, and it would be a very serious problem. But there is a public interest standard built into H.R. 3663 which would make it easier to experiment with new service and get out of that service, but would not make it automatic. You would still have to demonstrate that your exit action was in the public interest.

In that regard, I might also mention Rolla, which I think would under this legislation benefit from more service, probably. I happen to have Russ' Guide and I notice Rolla is right on the main road from St. Louis to Springfield. Right now both Greyhound and Trailway run through that road and Missouri Transit comes down from Jefferson City. There may well be right today intrastate restrictions on that interstate route which limits one or more of those bus companies from providing intrastate service, say between Rolla and St. Louis, to the citizens of Rolla.

Those restrictions would be removed under H.R. 3663, and I think it would really demonstrate the point.

Briefly, let me also touch on the matter of antitrust immunity and rate relief. The reason we must have antitrust immunity, at least to the extent of setting general rate increases, is that we have such a cumbersome procedure and still would have a cumbersome procedure under H.R. 3663 at the Federal and State level with regard to rate regulation that if we do not have the ability to sit together and meet and set a general rate level we would never be able to get our rates changed.

Now, here again H.R. 3663 has hit the balance, and maybe another balance would be total rate freedom in exchange for total removal of antitrust immunity. But there again, I think you would run into the practical fact that many State agencies would oppose that, and I think a lot of rural State senators would also.

So the balance established on rate regulation and antitrust immunity in H.R. 3663 is a good one and it should not be tampered with. Thank you.

[The statement follows:]

STATEMENT OF THEODORE C. KNAPPEN, SENIOR VICE PRESIDENT, TRAILWAYS, INC.

I appreciate the opportunity to testify today on behalf of Trailways, Inc., a bus company which provides passenger and package express services in cooperation with the National Trailways Bus System, a group of independent carriers of which Trailways, Inc. is a member. Trailways, Inc. strongly supports H.R. 3663 because it is a carefully constructed bipartisan compromise bill that satisfactorily addresses the two major issues in the bus regulatory reform debate. These are the need to relax entry controls so as to enhance competition and preserve small town bus service and the need to rationalize state regulations of entry, exit and rates to the extent that those state regulations would frustrate the goals of federal regulatory reform. I have provided, as Attachment 1, a summary of the most significant portions of the bill. Early passage of H.R. 3663 is urgently needed to remove the heavy handed, irrational regulation, particularly at the state level, that is threatening the very existence of our industry.

INTRASTATE ENTRY REGULATION AND INDUSTRY STRUCTURE

Forty-five years of this restrictive regulation have distorted our industry's structure, leaving one carrier, Greyhound, with 65 percent of the regular route passenger market and insufficient competition. You will see nothing like this concentration in any other transportation field. To make an apt analogy, picture a United Airlines that has a market share three times larger than its present share, owns the Boeing Company and owns or controls an airport in virtually every city in the country, and you will have a company with a market share and market power in the airline industry roughly equivalent to the Greyhound domination of the bus industry. Attachment 2 provides information concerning the industry structure.

This distorted industry structure has been largely fostered by state adherence to intrastate monopoly standards on interstate routes, even in the face of increasingly more flexible interstate entry controls. We are a low margin industry, and a bus company must have interstate and intrastate authority over a route in order to operate profitably. Thus a group of strategically situated monopoly states have perpetuated a nationwide bus monopoly despite the increasingly strong federal policy in favor of more competition.

A classic example is found in the State of Ohio. We provide a large amount of interstate bus service through Ohio daily and yet have been unable to get intrastate authority over those long established interstate routes. That means that on our Cleveland-Toledo-Chicago route, we can carry a passenger from Cleveland to Chicago, but we cannot carry a passenger from Cleveland to Toledo even though the buses go right through Toledo and stop there on their way to Chicago.

We have spent five years and more than $500,000 and have presented hundreds of witnesses to the Ohio Commission testifying concerning the need for this service and have still been unable to open our doors in Ohio. Furthermore, the Ohio monopoly regulation has not only throttled competition in that state, it has seriously hindered the development of competitive bus services throughout the adjacent, densely populated states of the Upper Midwest and Northeast since a weak route structure in one state inevitably contributes to service weaknesses in surrounding states. A more detailed description of our Ohio experience is contained in Attachment 3.

This is a classic case where intrastate and interstate regulations collide, with the consumer being injured. Bus service is the most energy efficient and inexpensive form of intercity transportation, and government policy should be to encourage, not discourage, its use. Thus it makes no sense for states to prevent their citizens from riding interstate buses between points in their state. Removal of closed door intrastate restrictions on interstate bus operations would immediately make available in many major states such as California and Ohio new intrastate bus mass transportation services without adding a single drop of fuel consumption.

Section 6 of H.R. 3663 takes a major step toward removal of these restrictions by creating a presumption that intrastate entry limitations on interstate routes are undue burdens on interstate commerce, and establishing an expeditious procedure for the state to consider removing these limitations (4 months) and for the ICC to review the state determination (3 months). Although there is strong reason for making the intrastate authorization automatic once the interstate authority has been granted, H.R. 3663 preserves the prerogatives of the states by giving them the authority to rule on the intrastate entry question in the first instance. This is a well balanced solution to perhaps the most critical problem with existing bus regulation, and we support the solution.

INTRASTATE EXIT AND RATE REGULATION

We also strongly support Sections 16 and 17 of H.R. 3663 which rationalize state rate and exit regulation while continuing to provide a substantial regulatory role of the states.

Trailways and many other carriers have experienced time and again the refusals of state regulatory agencies to allow discontinuance or reduction of money losing services even when there is little or no patronage of those services. A catalogue of recent Trailways' experiences is contained in Attachment 4.

Section 16 provides a procedure for abandonment of service that creates a statutory waiting period of up to 300 days and the application of a public interest test by both the state agencies and the ICC. Although we would like to see more carrier flexibility than authorized by Section 16, we think this is an improvement over present procedures and will provide some incentive for new carriers to experiment with new service to small communities.

No carrier can be expected to experiment with new service if that carrier believes that the state agency involved will not authorize it to abandon that service if it proves unprofitable. This simple fact of life is the main reason that bus service to small communities has deteriorated dramatically over the last decade. Section 16 should help to alleviate this problem in that it provides a mechanism which will make exit from a route somewhat easier than it is now. It is only through an approach like this that we can expect to maintain or improve small town service by the private sector.

Similarly, Section 17 should have the effect of encouraging private sector bus service by removing unnecessarily duplicative rate regulation. Under the present system, many states have held bus rates far below a reasonably compensatory level even though the interstate rates over the same routes were compensatory. These policies have created undue discrimination against intercity passengers and have sapped the vitality of many intercity bus carriers. Section 17 would largely remove this problem through the statutory presumption that carriers should be allowed to have intrastate rates that are the same as interstate rates between the same points and through the expedited review procedure concerning the application of this presumption.

INTERSTATE ENTRY AND ENHANCEMENTS OF COMPETITION

Turning now to interstate entry standards, we strongly support Section 6 of H.R. 3663 because on the one hand it makes entry into the intercity bus market much easier, but on the other, it provides a thorough degree of protection from further monopolization of the industry.

Section 6 takes the dramatic step of eliminating "public witness" testimony of need in application cases, which has traditionally been the major delay in granting applications. In this respect, the proposed entry standards for buses would be even looser than the relaxed entry standards contained in the recent trucking bill. And as reported in the New York Times, those standards have produced a flood of new entrants into the trucking field with 5,122 new interstate trucking companies having registered with the ICC in the last 18 months.[1]

Under Section 6, the ICC must grant the authority sought unless it finds that the proposed service "is not consistent with the public interest." The burden of proof is placed on the protestant, whereas it has historically been on the applicant.

At the same time that it loosens entry controls, Section 6 does take into account the unique monoploy structure of the intercity bus industry. Attachment 2 describes the extent and nature of the existing vertically integrated monopoly and how that monopoly has been fostered and protected by decades of restrictive regulation. Unfortunately that history has also been characterized by its variety of Greyhound anti-competition actions taken to maintain or increase its bus industry monopoly.

In the past, such actions have been the subject of an antitrust judgment, a contempt citation, and a consent decree.

The most recent example of this course of conduct occurred when Trailways simply sought to open its doors intrastate on certain interstate routes in Pennsylvania and Ohio that it was running in competition with Greyhound, Greyhound followed with what we viewed as an unprecedented attack on a smaller competitor, filing a series of applications over the few major routes in the Nation where Trailways has a significant advantage and which account for most of Trailways total profits.

Although Greyhound has as much right as anyone to apply to the ICC for a license, we contended that such a nationwide attack by the dominant carrier, intended to cripple its only substantial competition, and warranted special consideration by the Commission.

At Trailways request, the Commission, under then Chairman Gaskins, unanimously voted to consolidate the four most important significant applications into one proceeding and set them for hearing "with respect to the structure of the national motor bus industry and Greyhound's dominance of that industry" as well as the "cumulative effect of the four applications on the industry." The Commission's consolidation order appears at Attachment 2, Tab C.

Following the entry of the Justice Department into the case and the service of extensive discovery requests concerning Greyhound's dominance of the industry, Greyhound withdrew the four applications. Thus the very real threat of destruction of meaningful industry competition was removed.

Section 6 deals with the problem of further industry monopolization by providing that additional regular route authority shall not be issued if it would impair the ability of an existing carrier to provide a substantial portion of its regular route service. This should help ensure survival of small carriers and the small town service they often provide from devastating overfilings by major carriers. In addition the ICC is directed to consider the effect of a series of applications by one carrier on existing carriers. The purpose here plainly is to protect small carriers from massive overfilings by the dominant carrier, such as those that I have just described.

In sum, we view the entry standards as an enlightened and balanced approach that is likely to enhance competition and the quality of bus service.

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[1] "The Rocky Road for Truckers," Jan. 27, 1962, page 1, Business Section.

THE NATIONAL TRAILWAYS BUS SYSTEM AND THE ANTITRUST LAWS

The importance to Trailways, Inc. of an accommodation with the antitrust laws can perhaps be best understood with a discussion of the National Trailways Bus System (NTBS). Trailways, Inc. operates much of its service in conjunction with approximately 50 other carriers which are associated in an entity which we call the National Trailways Bus System. For this group of carriers to compete effectively with a monolithic company like Greyhound it must be able to make pricing and other marketing decisions as if it were one company.

As an example of the kind of service NTBS provides, take a passenger traveling from Portland, Oregon to Poplar Bluff, Missouri. The passenger could travel from origin to destination on one bus and with one ticket, but the service would be provided by several NTBS members. From Portland to Salt Lake City, the service would be that of Pacific Trailways, an independent NTBS member. From Salt Lake City to Denver, Rocky Mountain, part of Trailways, Inc. would provide the service. From Denver to Kansas City to Willow Springs, Missouri, the service would be rendered by Trailways, Inc.-Central and Midwest Trailways, both part of Trailways, Inc. A small independent, Marianna Trailways would complete the trip to Poplar Bluff, Missouri.

This example demonstrates both how important strong small carriers are to the Trailways system and why so many small carriers have been attracted into the system. It enables them to be an important part of a nationwide network, while maintaining their local independence and expertise.

Trailways' attempts to create for itself a niche in the market has not only involved small carrier cooperation, but also aggressive competition through innovative rate proposals, particularly in the last 5 or 6 years. Trailways launched the battle of competition discounts in 1975 with a 50-percent discount for the unemployed; Greyhound protested it and the ICC denounced it as discriminatory, but we made it stick. We have followed up with special fares for children, for senior citizens and a variety of point-to-point fares in special markets. Currently we have a "meet or beat" fare which guarantee the lowest fare anywhere in the United States.

Cooperation among small carriers and aggressive competition against Greyhound have enabled the Trailways system to carve out a piece of the market, but the fact is that under 45 years of regulation, we are the only system that has arisen to provide a meaningful challenge to the giant, and we are still quite small. All members of the National Trailways Bus System taken together produce only about 25 percent of the regular route passenger market, and Trailways, Inc., the largest member of NTBS, is only one-seventeenth the size of the Greyhound Corporation. The fact that NTBS has been the only significant competition for Greyhound that has arisen in the last several decades underscores how difficult it is to compete against an entity whose favored position established in a regulated environment has enabled it to control the passenger traffic, the terminals and the bus supply.

The NTBS members have the freedom now to work together to offer passengers fares and services that are attractive and responsive to changing market conditions. The loss of that flexibility, which would be the result if antitrust regulation is applied across the board, would erect a major barrier to the ability of NTBS to compete effectively.

REPORTS OF AN ADMINISTRATION POSITION: RELATIONSHIPS AMONG REGULATORY ISSUES

Within the last several days we have become aware of the outlines of an administration bill substantially different from H.R. 3663. Since we have not had an opportunity to review the language of a bill, we do not feel we can comment in detail at this time. We do believe it is important for the committee, in considering approaches significantly at variance with H.R. 3663 to be aware of the pitfalls that can be created by alterations in the balance achieved in the House bill.

Suggestions have been made that the Senate bill should go further and provide total interstate entry freedom with only insurance and safety requirements applicable. Because of the unique history and structure of this industry, such an approach would have the counterproductive effect of limiting, rather than increasing competition. This would be particularly so if it were not accompanied by an automatic right to serve intrastate points on intersate routes. As we have described, these intrastate monopolies have been instrumental in the maintenance of the nationwide monopoly structure, and if small carriers were faced with going through the complicated procedure of H.R. 3663 to get intrastate authority, while they faced immediate interstate competition, it is highly unlikely that they would be encouraged to start competitive bus services.

The small companies, and I include Trailways, Inc. in their numbers, would find themselves whipsawed just as Trailways, Inc. did when it sought to obtain intrastate authority in Ohio. The better interstate routes would be the subject of increased competition from larger carriers, and small carriers would be without the ability to expand into intrastate markets. A serious threat to competition would be created.

In addition, free entry should be entirely unacceptable unless it is combined with free exit. It makes no sense to allow carriers to enter markets freely, but then impose long delays and substantial limitations on their exit from those markets, such as those delays and limitations contained in Section 16.

In the first place, such a system would be highly inequitable to existing carriers who are now serving thousands of marginal routes. These carriers, Trailways, Inc. among them, would be faced with the prospect of unrestricted competition on their good routes while continuing to face severe restrictions on their exit from marginal routes that are tying up the assets that they need to face the new competition on the good routes.

Moreover, a free entry—limited exit regime would tend to discourage new entrants into the intercity bus industry since businessmen are not likely to be attracted to an industry where they face unlimited competition once they have built up a market, but where they have at best great difficulty exiting from markets that do not develop. This is no way to encourage private enterprise. If there is to be free entry with only minimum insurance and safety requirements then clearly it must be combined with free exit if the legislation is to have any chance of success.

The relationship between rate regulation and antitrust immunity is also important. The only possible justification for maximum rate regulation has been restricted entry. If entry barriers are swept away, then certainly maximum rate regulation should be eliminated also. And only under those circumstances should consideration be given to eliminating antitrust immunity.

CONCLUSION

The various relationships, just discussed, among interstate and intrastate entry, entry and exit, and entry and rate regulation must be properly balanced if Congress is to attain the objective of increased competition. That is why we support H.R. 3663. It has balanced the concepts well and we think it is the best approach given the environment in which bus deregulation is being examined. Thus, we again, urge support for the balanced provisions of H.R. 3663 which combine relaxed, but meaningful entry standards with somewhat relaxed exit standards where the ultimate test remains the public interest.

H.R. 3663 contains a number of other significant and/or controversial issues which are more fully discussed in Attachment 1. In conclusion, although there are a few provisions of H.R. 3663 that give us some concern, overall, we believe that the bill successfully addresses the major issues of bus regulatory reform and balances the various public interest factors in a very constructive manner. We thus wholeheartedly support it and urge this Committee to report it favorably as rapidly as possible.

[Attachment 1]

Bus Regulatory Reform Act of 1981, H.R. 3663—Summary Analysis

H.R. 3663, the House-passed Bus Regulatory Reform Act of 1981, contains a comprehensive reduction of Federal and State regulations that should have the effect of producing a more competitive, market-sensitive intercity bus industry. The four major categories covered in the bill are rationalization of state regulation, entry policy, rate regulation, and rate bureaus. Two other provisions, both proposed by organized labor, would mandate use of CB radios and provide labor protection. Each of these items will be briefly reviewed.

I. RATIONALIZATION OF STATE REGULATIONS

The most significant and useful part of H.R. 3663 are those provisions rationalizing state regulation of entry, exit and rates. Evidence presented during the House hearings overwhelmingly demonstrated that the intercity bus industry has been uniquely subjected to heavy handed state regulation that has limited competition and sapped the financial strength of many providers of bus service. It became obvious that reform of federal regulations would be futile unless there was a reasonable degree of uniformity at the state level. Therefore, procedures were established for expedited review at the federal level of state decisions impacting on interstate bus operations for the purpose of ensuring that these state regulations did not unduly burden interstate commerce. These provisions, while preserving the regulatory rights of the states, do provide a mechanism for meaningful regulatory reform.

A. Intrastate entry (section 6)

There is a presumption that intrastate entry limitations on interstate routes are undue burdens on interstate commerce, and an expeditious procedure is established for the state to consider removing these limitations (for months) and for the ICC to review the state determination (three months). Although interstate entry standards have been eased in recent years, much of the monopoly structure of the intercity bus industry has been maintained because of highly restrictive intrastate entry standards in major states such as Ohio and California. In those instances where the carrier has interstate authority but has no intrastate authority such "closed door" policies have serious adverse economic impact. Given the fact that a carrier must have both interstate and intrastate authority over a route in order to be competive, there is strong reason for making the interstate authorization automatic once the interstate authority has been granted. However, in order to preserve the prerogatives of the states, H.R. 3663 gives the states the authority to rule on the intrastate entry question in the first instance.

B. Intrastate rates (section 17)

Section 17 of H.R. 3663 creates a presumption that carriers should be allowed to have intrastate rates that are the same as interstate rates between the same points and establishes a expedited procedure of initial state rulings (four months) followed by ICC review (three months). At present, many states have held rates far below the rate level reviewed and approved by the ICC. Logic should dictate that carriers be automatically authorized to charge the same rate for an intrastate movement between two points as they are authorized to charge for an interstate movement between those same two points, but again in order to preserve state decision making prerogatives, H.R. 3663 gives the states the first opportunity to rule on this issue.

C. Schedule changes and total abandonment of service (sections 16 and 17)

With regard to schedule changes that do not reduce service to less than once a day five days a week, an expedited procedure is established whereby states must rule on carrier schedule change proposals within 60 days with ICC review taking no longer than 30 days. The standards for ICC review are those standards that are presently in place at the ICC, which provide the carrier with considerable flexibility in adjusting schedules. Such a procedure is necessary since many states have been known to take up to a year and sometimes more in ruling on schedule changes not amounting to total cessation of service and thus severely impacting on the carrier's ability to perform other operations.

A much more stringent standard and lengthy procedure applies when a carrier proposes to reduce service to less than once a day five days a week or to eliminate service altogether. In these cases, the combined state and ICC review procedure can take up to 300 days and the ICC must determine whether the abandonment is consistent with the public interest. Although a public interest test may be appropriate when total abandonment is contemplated, the 300 day procedure seems much too long given the fact that generally these cases involve little or no ridership and no available subsidy for the carrier to use to offset its losses. A maximum of 210 days, which is the time allowed for entry and rate decisions, should be allowed for exit cases.

II. INTERSTATE ENTRY (SECTION 6)

Section 6 of HR 3663 loosens and modernizes the standards for entry into the intercity bus industry. The ICC must grant the authority sought unless it finds on the basis of a protestant's evidence that the proposed service "is not consistent with the public interest". Thus the provision eliminates "public witness' testimony of need, which has traditionally been the major delay in granting applications. Furthermore, the burden of proof is placed on the protestant, whereas it has historically been on the applicant.

However, Section 6 does recognize the unique monopoly structure of the modern day bus industry by providing that regular route authority shall not be issued if it would impair the ability of an existing carrier to provide a substantial portion of its regular route service. This gives a needed degree of protection to the small carrier from further large carrier domination in an industry that already has an extremely high degree of market concentration, which concentration has developed through decades of restrictive regulation.

The ICC is also directed to consider the effect of a series of applications by one carrier on existing carriers. Here again, the purpose is to protect small carriers from massive overfilings by the dominant carrier, such as those that have occurred in recent years.

III. ZONE OF RATE FREEDOM (SECTION 11)

Bus carriers are given rate flexibility similar to that now authorized by statute for truckers. Section 11 would permit bus carriers, by independent action, to raise by 10 percent or lower by 20 percent above or below the level existing one year prior to the effective date of the proposed rates without ICC suspension on grounds of unreasonableness. The ICC is authorized to enlarge the upper limit of the zone by not more than ten percentage points. Carriers cannot take general rate increases under the zone of rate freedom. These will continue to be subject to normal ICC review. Moreover, if carriers do take a general rate increase, the zone of rate freedom for that year is reduced by the amount of the general rate increase.

IV. RATE BUREAUS (SECTION 10)

Bus industry antitrust immunity to meet to discuss rates is narrowed from the broad authority contained in existing law to only that necessary to maintain a coordinated bus system nationwide. Discussion and voting on single line rates is prohibited after January 1, 1984. The authority to discuss and vote on general rate increases and other joint line rate proposals that the carriers involved can "practicably participate" in is retained. Without this authority, the existing system of through routes and joint rates would disintegrate, at least with respect to small community service and the small carriers that often provide that service. It is also critical to the continuation of a nationwide network of small carriers such as the National Trailways Bus System, which is the only meaningful competition for the dominant carrier, Greyhound.

V. OTHER CONTROVERSIAL ITEMS

Two provisions not contained in any of the original proposals were added at the behest of organized labor. They are:

A. Citizens band radios (section 25)

The National Academy of Sciences was directed to conduct a study of the effect of the use of Citizens Band radios on buses on safety and passenger comfort. The Secretary of Transportation is then mandated to issue rules directing bus companies to permit drivers to use Citizens Band radios on buses, if the NAS conclusions so warrant. The industry strongly opposed this provision on the grounds that historical evidence has shown that unrestricted intercity bus driver utilization of Citizens Band radios is not safe and that this has been, and should continue to be, a matter for labor-management negotiation.

B. Employee protection (section 27)

Provision is made for preferential rehire of employees terminated because of substantial reduction of service under Section 16 or discontinuance of service under Section 17. The provision would be effective for ten years, and the ICC would monitor compliance and require certain record keeping and reporting. The industry opposes this position primarily because of the lack of definition of some terms such as "substantial reduction", the length of time that the provision would be effective, and the burdensome paperwork requirements.

[Attachment 2]

BUS INDUSTRY STRUCTURE

Greyhound has monopoly power and it exercises that power.

Greyhound economic power.—65 percent of market share; controls another 10 percent through interline arrangements; subsidiary manufactures 70 percent of intercity buses sold in U.S.; total Greyhound Corporation revenues are 18 times those of Trailways and its subsidiaries. (See Tab A for description of industry structure and comparison with other industry structures.)

Greyhound History.—Sought regulation because of belief in monopoly power protection; Greyhound had only 15 percent of market in 1934. The 1935 Motor Carrier Act started regulation.

Justice Department consent decree in 1957.

Mt. Hood Stages litigation, commenced in 1964 with final Supreme Court action in 1980. (See Tab B for description by Chief Justice Burger.)

Blanket filings over Trailways' routes lead to 1980 ICC investigation of Greyhound's attempt at further monopolization of the industry. The limitation of those filings to Trailways' routes and the unique timing exemplifies Greyhound's anticompetitive purpose. After the ICC order, Greyhound withdrew its applications. (See Tab C for scope of ICC investigation of Greyhound market dominance.)

The "relevant market" is the intercity bus industry, not the intercity passenger industry. The determination of the relevant market is the test used by the Justice Department to decide whether effective competition exists in a particular industry.

Many bus riders—the old, the young, the poor—have little or no access to a car (that number may be increasing with inflation).

14,000 of the 15,000 points served by bus are served by no other commercial mode (i.e., air or rail) and that number may be increasing as costs increase and government subsidies to air and rail receive closer scrutiny.

Conclusion

45 years of regulation have enabled Greyhound's market share to grow from 15 percent to 65 percent and have given it an overwhelming advantage in the components critical to a successful bus system, i.e., terminals, feeder system, and size and age of bus fleet.

Remedy

Competition by small carriers can only be fostered by regulatory protection against predatory or retaliatory use of market advantage by a monopoly carrier; Mt. Hood Stages' 16-year battle demonstrates that traditional antitrust protection is not sufficient against a monopoly created by regulation. The House dealt with this problem in a reasonably effective manner. (See Attachment 1, page 3, for description of interest entry standards.)

The Regulatory Road To More Competition and Better Service in the Bus Industry[*]

I appreciate the opportunity to discuss with you today how, in Trailways' view, regulation can be reformed by legislation to produce a more competitive bus industry and one better able to respond to the public need for convenient, low cost, energy efficient public transportation. In order to determine how best to regulate the bus industry, one must understand the structure of that industry and how it developed and presently functions.

For many years, the intercity bus industry has been the mystery man of transportation—a small, unglamorous, quiet group of companies serving the backwaters of America and permeating the consciousness of Washington officials only slightly when the occasional general rate increase was sought. But times have changed, and with the advent of the energy crisis, the need for low cost, energy efficient intercity transportation has grown dramatically, and the intercity bus, as the lowest cost and most energy efficient means of intercity transportation has become quite important.

Now that air, truck and rail (almost) legislation is behind us, decision makers are starting to take a hard look at the intercity bus industry and how regulatory reform of this newly important transportation field can best be accomplished.

What they will find is an industry with a structure unique in all of private enterprise transportation. The bus industry is a monopoly. That monopoly belongs to Greyhound. In 1979, Greyhound and its owned or controlled subsidiaries accounted for 65 percent of the regular route passenger revenues generated by all Class I carriers. Greyhound's nearest competitor, Trailways, Inc. and its owned or controlled subsidiaries, produced only 21 percent of regular route passenger revenues, less than one-third as much as Greyhound.

No other private enterprise transportation industry has anything approaching this one carrier domination. By comparison, the largest truck line, Roadway, has less than 5 percent of the revenues generated by the trucking industry; the largest railroad, Conrail, has less than 15 percent of railroad revenue; and the largest airline, United, had less than 25 percent of all air carrier revenue.

Moreover, Greyhound is a vertically intergrated monopoly that effectively controls all essential parts of the bus business. In 1979, its bus manufacturing subsidiary produced more than 70 percent of the 1,400 intercity buses sold in the United States. It also controls by far the greatest number of terminals and intercity bus maintenance facilities in the United States. For those of you who are looking to the airline industry as a model for the bus industry, picture a United Air Lines that has a market share almost triple its present share and that owns Boeing and you will start to get an accurate idea of how totally Greyhound dominates the bus industry.

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[*] Remarks of Theodore C. Knappen, Senior Vice President, Trailways, Inc. before the Federal/State Conference on Intercity Bus Transportation, Washington, D.C. Sept. 22, 1980.

Although the size of Greyhound Lines is impressive enough, the size differential between the parent corporation, Greyhound Corp., and the rest of the bus industry is staggering. In 1979, Greyhound Corporation had revenues of $5.02 billion. Their revenues were 18 times greater than Trailways, Inc. and its subsidiaries, which are owned by New Trails, Inc., a company with no holdings outside of the bus industry, and 456 times greater than the average 1979 revenue ($11 million) of all Class I bus carriers excluding Greyhound.

Interstate bus regulation under the Motor Carrier Act of 1935, has contributed substantially to the entrenchment of the Greyhound monopoly. At the dawn of regulation, Greyhound was a newly established nationwide system with a dominant, but tenuous position. After forty-five years of regulation, greyhound's monopoly position is firmly rooted. Greyhound has used the regulatory system well to nip in the bud any meaningful threats to its domination by the use of its massive resources to wear down opponents in administrative proceedings and to ultimately defeat them or to make their victory extremely costly. Greyhound has also sought to maintain its monopoly position through predatory actions outside of the regulatory sphere, which have been the subject of an antitrust judgment,[1] a contempt citation,[2] and a consent decree.[3]

These activities have produced the perception in the bus industry that it simply does not pay to try to compete against Greyhound in the present regulatory climate. As a result, there have been virtually no major regular route applications over the last 15 years up until the last several years.

Recently, Trailways had the temerity merely to seek to open its doors intrastate on certain interstate routes in Pennsylvania and Ohio that it was running in competition with Greyhound. True to historical form, Greyhound went for the jugular. In an unprecedented attack on a smaller competitor, it filed a series of applications over the few routes in the nation where Trailways has a significant advantage and which account for most of Trailways total profits.[4] Grants in these six cases taken together would severely cripple, if not destroy the Trailways system, the only nationwide bus competitor for Greyhound.

Thus, the awesome market domination by Greyhound and its continuing predilection to increase that market dominance by the crushing of competitors, existing or potential, are the central economic facts of life about the bus industry that must be considered in determining how best to reform regulation of that industry.

We anticipate that entry regulatory reform is likely to be patterned after the liberalized entry rules contained in Section 5 of the motor Carrier act of 1980. That provision eases entry into the trucking field considerably by requiring only that an applicant demonstrate that the proposed service "will serve a useful public purpose, responsive to a public demand or need." This minimal showing is all that is required of an applicant in order to get a certificate unless a protestant can carry the much heavier burden of showing that the proposed service "is inconsistent with the public convenience and necessity."

Under ordinary market conditions, this approach would have great merit, particularly if combined with some reference to the decisional factors contained in the entry provision of the proposed ABA bill. It would tend to encourage small carrier applicants who are often uniquely suited to meet local demands or to provide low revenue rural service profitably. But we believe, given the unique and deeply rooted monopoly that has been fostered by forth-five years of regulation and the perception in the industry that Greyhound will retaliate fiercely against any attempt to compete with it, that it is imperative that loosening of entry standards be accompanied by transitional protection for new competitive services.

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[1] *Mt. Hood Stages, Inc.* v. *Greyhound Lines, Inc.*, 555 F. 2d 687 (9th Cir. 1977), aff'd. 437 U.S. 322 (1978).

[2] *United States* v. *Greyhound Corp.*, 363 F Supp. 525 (N.D. Ill. 1973) and 370 F Supp. 881 (N.D. Ill. 1974), aff'd. 508 F 2d 529 (7th Cir. 1974).

[3] *United States* v. *Greyhound Corp.*, 1957, CCH 73,086 (P68,756, N.D. Ill. 1957).

[4] Greyhound Lines, Inc., Extension—Montgomery, Ala.-Dallas, Texas. Docket No. MC-1515 (Sub No. 239); Greyhound Lines, Inc., Extension—Dallas-Houston. Docket No. MC-1515 (Sub No. 241); Greyhound Lines, Inc., Extension—Little Rock, Arkansas. Docket No. MC-1515 (Sub No. 255F); Greyhound Lines, Inc., Extension—Columbus, Georgia-Tallahassee, Florida. Docket No. MC-1515 (Sub No. 285F); Greyhound Lines, Inc., Extension—Lincoln, Nebraska. Docket No. MC-1515 (Sub No. 260F); Greyhound Lines, Inc., Extension—Denver, Colorado-Cedar City, Utah. Docket No. MC-1515 (Sub No. 281F).

Without such protection, liberalized entry provisions like those contained in the trucking act are likely to produce an even more concentrated monopoly than presently exists. Deprived of even the limited regulatory protection from retaliation that they now have, small carriers would be even less likely to challenge Greyhound. On the other hand, it will become much easier for Greyhound to file successfully series of applications designed to eliminate competition such as the series of applications now pending against Trailways, Inc. and other members of the National Trailways Bus System.

There are several ways that transitional protection for small carriers could be built into a new entry provision. One way would be a flat out prohibition against Greyhound's applying for any new authority during a transition period. This would certainly provide the necessary protection to small carriers, and may be a desirable approach. However, it is subject to the argument that it unduly discriminates against Greyhound in that it would prohibit legitimate applications as well as those that were retaliatory.

Another approach would be to list the size of the applicant and the possibility that the application is retaliatory as factors to be considered in determining whether grant of an application to the monopoly carrier is consistent with the public convenience and necessity. The problems with this approach are that the burden remains on the small carrier protestant and that the small carrier's perception of the ability of the monopoly carrier to retaliate is not likely to be changed by language simply allowing these factors to be considered. This approach would do little to encourage applications against the monopoly carrier.

A third alternative and the one that we think is the best would be a statutory presumption that for a transitional period, any application for additional authority made by a carrier with a nationwide monopoly is inconsistent with the public convenience and necessity. Such presumption could be rebutted by applicant's showing, through a preponderance of the evidence, that the application would not be harmful to the development of competition in the intercity bus industry.

This approach has several key benefits. First, the presumption is entirely logical given the market share of the monopoly carrier and its recent history of retaliatory actions. Second, it provides an effective measure of protection for small carriers and thus should encourage them to file for new authority when they see a market opportunity, without fear of reprisals. Third, it is fair to the monopoly carrier in that it allows it to pursue legitimate market opportunities, while precluding retaliatory action or other anti-competitive conduct.

To be effective, this statutory presumption should remain in effect for a period long enough so that small carriers can establish new competitive services sufficiently that they have developed market identification and the cash flow sufficient to fund capital investments necessary for ongoing operations. The time should also be sufficient to allow for the development of the new transportation center program so that in many cities new carriers do not have the expense of funding a terminal.

Although such a provision would remove a major roadblock to the institution of competitive new services by small carriers, the question remains whether there is sufficient interest among small carriers in regular route service to actually lead to more competition in the bus industry. Our experience has shown that there clearly is such interest.

The National Trailways Bus System is an association of independent carriers, Trailways, Inc. and its subsidiaries being the largest, which has as its primary purpose the development and improvement of its regular route passenger service. We have encouraged small carriers to join NTBS because we believe that there are great opportunities for small carriers in the regular route business by combining their local management and expertise with a nationwide route structure.

The results have been amazing. Less than a year ago, NTBS had 17 independent member carriers; we now have 36. The primary reason for this growth of more than 100 percent is the belief of these small businessmen that opportunities exist for new regular route bus service. This belief has been put into action as NTBS expansion has led to new service in Florida, in the middle Atlantic states, in New England, in the upper Midwest, in Texas and elsewhere.

The opportunity and the interest is there. As long as small carriers are protected from monopoly carrier aggression during a transition period, competition can flourish in the new regulatory environment.

Turning briefly to several other items of particular importance, I would like to focus on the need for improved safety fitness standards to go along with a liberalized entry policy. This is particularly necessary with regard to charter operations.

In the past several years, there has been a flood of charter applications which have been almost invariably granted, and if the entry provisions are further liberalized, this flood can be expected to grow even larger. This is likely to lead to many new carriers of questionably safety and financial fitness carrying our children and others in charter groups throughout the country.

To provide for adequate safety regulation, we strongly urge the adoption of 49 USC 10922(b)(5) as proposed by the ABA. This provision would require, when questions concerning an applicant's safety fitness are raised, a DOT certificate that the applicant is, and is likely to continue, in compliance with Federal Motor Carrier safety regulations. It also provides for only limited term certificates to completely new carriers and requires carriers to have at least two million dollars worth of insurance. If anything, we suggest that the two million dollar figure may be too low; by comparison, Trailways, Inc. requires any bus operator that we lease equipment to or from to have at least five million dollars worth of insurance.

Another critical and controversial subject is that of rate bureaus and their future role. Public Law 96-296, although it limits in many respects rate bureau action, does allow for the continuation of rate bureau handling of general rate increases. On the other hand, the Commission's recent decision in the Western Railroad rate agreement case would prohibit rate bureau action on general rate increases. Prohibition of general rate increases in the bus industry would be very detrimental to the provision of through service and to the maintenance of small carrier competition.

Given the fact that the intercity bus industry serves 15,000 communities, the existing rate structure is exceedingly complex. If no across-the-board adjustments could be discussed and made, it is difficult to see how the hundreds of small carriers providing regular route service in rural areas could continue to be part of the nationwide network of joint rates and through routes. The situation would be entirely too complex and would turn back the clock by decades with regard to through ticket bus service.

It would also be a major competitive disadvantage for a group of small carriers, such as NTBS, banding together to provide through competitive bus services against one large carrier. Whereas that one large carrier could set the rates for its entire system with relative ease, the system of small carriers would be caught up in an extremely cumbersome and time consuming process of one on one discussions concerning specific joint rates.

The ability to compete for such a system of small carriers would be severely hampered. Thus, we urge the adoption of a provision like Section 14 of Public Law 96-296 or Section 5 of the ABA bill, which preserves the ability of rate bureaus to set general rate increases.

Finally, on the thorny and important issue of coordination of federal-state regulation, we believe that the two are so intertwined in the regulation of the bus industry that there must be provisions that allow for a coordinated and logical nationwide system of regulation. This can only be accomplished by statutory mechanism that allows the ICC to step in and reverse state regulatory actions that are so inconsistent with nationwide regulatory policy that they are thwarting the purposes of that policy and contributing to a weakened bus system. Although this is a complicated subject requiring much give and take, we suggest that Sections 6 and 12 of the ABA bill strike a good balance between maintenance of state prerogatives and coordination sufficient to provide a consistent and effective regulatory policy towards bus service. I am sure that these provisions will be the subject of much discussion in the upcoming workshop sessions, and hopefully from these sessions, a consensus on this issue will develop since it is crucial to any effective and fair bus regulatory reform bill.

We believe that a regulatory reform bill that contains the provisions we have discussed here today will lead to a more efficient competitive and decentralized bus industry that will be more responsive to the demands and needs of the people that it serves.

As Chief Justice Burger stated in his concurring opinion in *Greyhound Corporation* v. *Mt. Hood Stages, Inc.*, 437 U.S. 322, 337 (1978): "The opinion today has no occasion to focus on Greyhound's egregious behavior toward Mt. Hood Stages—aimed at total destruction of a competitor. In the present case the jury found Greyhound not only to be in violation of the Sherman Act, but that it had fraudulently concealed its antitrust violations for more than a decade. Moreover, the Interstate Commerce Commission found that petitioner's actions were 'inspired by a desire to stifle competition,' in particular an intent to 'injure or destroy' respondent. Mount Hood Stages, Inc., 104 M.C.C. 499; 461 (1968). Beyond its unlawful conduct, Greyhound took the added step of willfully disobeying the enforcement order of the United States District Court. In assessing criminal fines of $600,000 against Greyhound, the District Court, in a careful and detailed opinion, observed that Greyhound had 'displayed a contempuous reluctance to even commence compliance' with the court's order."

INTERSTATE COMMERCE COMMISSION DECISION

NO. MC-1515 (SUB-NO. 239)[1]—GREYHOUND LINES, INC., PHOENIX, ARIZ.

(Decided November 20, 1980)

We have considered the applications and the records in these proceedings, including:

(1) Motion of Trailways, Inc., filed May 30, 1980, to consolidate these six applications;

(2) Petition of Adirondack Transit Lines, Inc., et al. (23 carriers identified as the small carrier members of the National Trailways Bus System), filed June 6, 1980, for leave to intervene in these six proceedings;

(3) Tendered statement of position submitted by the carriers identified in (2), filed June 6, 1980;

(4) Petition of Office of Special Counsel, Interstate Commerce Commission, filed June 25, 1980, for leave to intervene in these six applications, and in support of the motion to consolidate;

(5) Petition of the United States Office of Consumer Affairs, filed June 27, 1980, for leave to intervene in these six applications, and in support of motion to consolidate;

(6) Reply by Greyhound Lines, Inc., applicant, filed July 15, 1980;

(7) Motion of Trailways, Inc., et al., filed July 29, 1980, to strike portions of (6). Greyhound replied.

It is ordered.—The small carrier members of the National Trailways Bus System, the Office of Special Counsel, Interstate Commerce Commission, and the United States Office of Consumer Affairs are permitted to intervene in these proceedings and participate in all further proceedings. The statement of position of the small carrier members of the National Trailways Bus System is accepted for filing.

The motion to strike is denied.

The motion for consolidation is granted in part and denied in part.

Whether or not to consolidate different cases for hearing and consideration is a question concerning the most efficient disposition of the Commission's docket. It turns on a number of considerations, including the factual relationships between different cases, the commonality of the factual and legal issues involved, the timeliness of requests to consolidate, and the procedural stages of the different cases at the time consolidation is requested.

Parties usually file requests to consolidate proceedings before the submission of evidence in the proceedings. In this motion, however, Trailways asks consolidation of six Greyhound applications that are in various procedural stages before the Commission. For example, in Sub-No. 281, hearings have not yet been held. By contrast, the proceeding in Sub-No. 255F is administratively final and is currently pending review in the United States Court of Appeals.

Four of the six applications involve requests for new operating routes. In the other two proceedings—Sub-Nos. 255F and 260F, Greyhound seeks unrestricted authority to serve intermediate points on routes over which it currently operates.

Trailways argues that the Greyhound applications are a concerted action aimed at altering the competitive structure of the motor bus industry in the United States. Consolidation of the four applications to serve new routes will allow the Commission to consider fully Trailways' arguments and the alleged impact of these applications on the intercity bus industry. The proceedings in No. MC-1515 (Sub-Nos. 239, 241, 258F) are reopened for further hearing, on a consolidated record with the proceeding in No. MC-1515 (Sub-No. 281F), with respect to the issues of the structure of the national motor bus industry and Greyhound's dominance of that industry, the cumulative effect of these four applications on that industry and its competitive structure nationwide, the impact that a grant of these four applications would have on the traveling public, and such further matters as the hearing officer may deem appropriate. In all other respects, hearings in No. MC-1515 (Sub-No. 281F) will proceed independently.

The request for consolidation with respect to the proceedings in No. MC-1515 (Sub-Nos. 255F and 260F) is denied because these two applications simply seek authority to provide unrestricted service at named intermediate points on highways over which applicant already operates, and therefore involve factually different issues from the applications to serve entirely new routes. Moreover, the proceeding in Sub.-No. 255F is administratively final, and the proceeding in Sub-No. 260F is pending an administrative appeal of an initial review board decision and is therefore near completion. The facts and procedural posture of these two proceedings distinguish them from the other four proceedings and warrant denial of the motion to consolidate them with the other four proceedings.

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[1] This proceeding embraces No. MC-1515 (Sub-Nos. 241, 255F, 258F, 260F and 281F).

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

AGATHA L. MERGENOVICH,
Secretary.

[SEAL]

[Attachment 3]

ENTRY PREEMPTION: THE OHIO EXPERIENCE

Four years ago, Trailways filed to "open its doors" in Ohio on its two major interstate routes moving through the State. Although according to Trailways' Ohio counsel no major passenger application opposed by Greyhound had been granted in that State during the last ten years, Trailways believed that it would be impossible for the State of Ohio to ignore the public interest in making available to the people of Ohio more intrastate mass transportation service without adding one drop of fuel.

Trailways was wrong. After four years of hearings and the presentation of hundreds of witnesses, the Public Utilities Commission of Ohio denied the Trailways' application almost entirely. The only passenger service granted was that in conflict with a small bus company. No passenger authority was granted that would conflict with Greyhound Lines, Inc. authority.

The PUCO ignored arguments concerning the need for competition and the need for fuel efficient alternatives to the automobile and instead relied on two fifty-year old cases setting an impossible burden of proof on an applicant such as Trailways. The fact that Trailways was simply attempting to "open its doors" and make available an intrastate service by its interstate route had no effect whatsoever on the PUCO. Thus, by its decision, the PUCO maintained the Greyhound monopoly over 95 percent of the regular route passenger service in Ohio.

This decision exemplifies a regulatory attitude that not only deprives the people of Ohio of competitive bus service, but discourages the development of bus service throughout the industrial heartland of the United States. Intra and interstate authority is needed to run a bus line profitably and the line must be allowed to continue from state to state. Thus, the prevention of bus competition in Ohio by the PUCO also restricts the development of competitive bus service in nearby states such as Michigan, Pennsylvania, New York, Kentucky and Indiana.

This bizarre situation is a clear example of the need for the removal of closed door intrastate resrictions on interstate bus operations. Such removal would be accomplished by Section 6(b)(1) of House passed H.R. 3663. There are many other examples, but this is the most egregious and most recent. What follows is an abstract of the PUCO order denying the Trailways' application.

ABSTRACT OF THE OPINION AND ORDER OF THE PUBLIC UTILITIES COMMISSION OF OHIO IN CONSOLIDATED CASES No. 77-1231-BS-ACE AND No. 77-1231-BS-ACE, MAY 27, 1981 DENYING TRAILWAY'S APPLICATION TO CARRY PASSENGERS INTRASTATE BETWEEN POINTS IN OHIO

I. BACKGROUND

In 1977 Trailways Inc. applied to the Ohio PUC for a license to carry passengers intrastate in Ohio, where service is now provided almost exclusively by Greyhound. The PUC denied almost all the application where Trailways sought to provide service over routes now served by Greyhound.

II. CHRONOLOGY

September 27, 1977—Trailways files application.

November 28, 1977-April 10, 1978—Ohio PUC holds 34 days of hearings, hears testimony for Trailways, (243 public witnesses, stipulated testimony from 162 others, 5 Trailways officials and one expert witness) and Greyhound (128 public witnesses, 12 Greyhound officials, 4 retired Greyhound employees, and one expert witness).

November 5, 1979—Attorney examiner for Ohio PUC files report, recommendinig that Trailways applications be denied except as to passengers on two routes (Steubenville-Cambridge and Steubenville/Cadiz-Springfield with certain intermediate points) not being served by Greyhound, and express (but not passenger) service between Cleveland and Toledo. The only passenger service found inadequate was that provided by a small carrier serving routes which Trailways was given authority to serve.

May 27, 1981—Ohio PUC issues order denying all parts of Trailways application except for two passenger routes not served by Greyhound, and express freight between Cleveland and Toledo.

III. Basis for the Ohio PUC Decision: Statute and Precedents

Statutory test for a license to carry passengers intrastate service in Ohio (Section 4921. 10): Applicant must obtain a certificate from the PUC declaring that the "public convenience and necessity require such operation." When the territory where the applicant is seeking to operate is already served by a carrier, the PUC may grant a certificate "only when the existing motor transportation company or companies serving such territory do not provide the service required . . ." If the existing transportation service "is reasonably adequate," the Commission shall not grant such certificate.

Court interpretation of the statute cited by the PUC: "reasonably adequate" does not contemplate the "highest character of service either as to frequency or directness," but only a service which is "practical"; *Canton-East Liverpool Coach Company* v. *PUCO*, 123 Ohio St. 127 (1930).

It is the policy of the statute . . . that additional service be authorized only where the service rendered is inadequate and cannot or will not be made adequate by the existing utility, *Scioto Valley Ry & Power Company* v. *PUCO*, 115 Ohio St. 258 (1926).

Ohio PUC will not grant charter authority; authority to conduct charter operations are "incidental to" authority to operate regular routes.

IV. The Ohio PUC Decision

The PUC found that existing service was not inadequate despite testimony of more than 400 witnesses as to specific deficiencies with existing service and need for additional service, i.e., schedules infrequent, buses late, buses dirty, drivers discourteous; this testimony was considered to be offset by testimony from Greyhound witness of specific instances of adequate schedules, timeliness, clean buses and courteous drivers.

The PUC said, p. 22, "Arguments supporting the application on the basis of competition or because of an opposition to government regulation should be addressed to the General Assembly and not to this Commission."

The PUC said that finding that Greyhound's service was adequate "does not mean that the existing service of Greyhound is perfect or even close to it;" p. 10.

Grant of package express authority between Cleveland and Toledo premised upon testimony of shippers who not only presented "evidence of isolated incidents," but also "testified that delayed or lost shipments occurred with a alarming regularity;" PUC order, p. 15.

[Attachment 4]

Recent Examples of Burden on Interstate Commerce Imposed by Unreasonable State Regulation

In the last several months, Trailways, Inc. has filed in numerous states to reduce its service to respond to the general softness in travel demand this year and to the reduction in traffic that occurs after Labor Day. Since traffic often falls 25 percent or more after Labor Day, Trailways sought to achieve a nationwide 12 percent reduction in schedule miles spread fairly evenly throughout the country. However, many states have arbitrarily suspended the proposed Trailways reductions with little or no public protest, causing Trailways to suffer losses running into millions of dollars and forcing Trailways to cut back much greater than 12 percent in areas such as the Northeast Corridor and Florida where unreasonable state restraints do not exist. The following is a state by state description of state actions where Trailways suffered the largest amount of adverse action:

1. Arkansas.—In Arkansas, Trailways filed 7 schedule reductions, and the Arkansas Commission suspended all of the reductions, whether or not any protests were received. The total number of annual miles involved is roughly 500,000. The schedule by schedule breakdown is as follows:

1. One local schedule between Little Rock and Memphis. This is one of seven Trailways schedules between these two points and there is another schedule over exactly the same route serving exactly the same points that runs one hour and forty-five minutes before this schedule.

2. Two of five Trailways schedules between Little Rock and Pine Bluff. These schedules are producing roughly 20 cents a mile in revenue while Trailways year to date operating costs per mile are $1.79.

3. One of three schedules between Little Rock and McGehee. This schedule is producing less than 70 cents a mile.

4. Two of six schedules a day between Little Rock and Hot Springs. These schedules are producing less than 70 cents a mile.

5. One of two schedules a day between Monroe, Louisiana and Pine Bluff, Arkansas. This schedule is producing less than 70 cents a mile.

6. One of two Trailways schedules a day between Hot Springs and Texarkana. This schedule is producing less than 45 cents a mile.

7. The one schedule run by Trailways between Fort Smith and Hot Springs. This schedule is producing less than 60 cents a mile. This was the only abandonment of a route in the entire group.

Despite the exorbitant losses suffered on those schedules an ample alternative service, the Arkansas Commission arbitrarily suspended every Trailways proposed reduction. Based on past experience, we anticipate that it will take months, if not years, to get even a small part of these changes through.

2. California.—In the spring of 1981, Trailways instituted some experimental new service over I-5 between Los Angeles and San Francisco and between Fresno and San Francisco.

When traffic did not materialize as expected, we filed to remove on July 1 one round trip between Fresno and San Francisco that was yielding 40 cents a mile and one round trip between San Francisco and Los Angeles that was yielding roughly $1.00 a mile. This would have left four Trailways round trips between Fresno and San Francisco and four Trailways round trips between Los Angeles and San Francisco.

The California Commission suspended our proposed discontinuances and set them for hearing, which was held in August. The Commission still has not rendered a decision concerning the removal of these schedules despite their experimental nature and despite the fact that there is ample alternative service not only from Trailways, but also from Greyhound and other modes of public transportation.

It is hard to imagine a stronger disincentive to experimentation with new bus service than this experience in California.

3. Kansas.—Although the Kansas miles are not as large as the Arkansas or California miles, the actions of the Commission are perhaps even more arbitrary:

1. Wichita-Fort Scott. Trailways sought to reduce its service from 7 days a week to 5 days a week because this route averages approximately 35 cents a mile in revenue. The Commission denied the proposed reduction without even holding a hearing.

2. One schedule between Wichita and Lincoln. After a hearing, the Nebraska Commission approved the removal, but the Kansas Commission did not. This denial was despite the fact that the schedule was producing less than 30 cents a mile. As a result of this decision, we are now running a bus to Marysville, Kansas, just below the Nebraska state line, and then returning it to Wichita.

3. Hutchinson-Stockton. Trailways sought to transfer this route to an established bus carrier in the state, Trans State Bus Lines. The Kansas Commission denied the transfer application apparently on the grounds that Trans State intends to operate this rural route with 14 passenger vans. They like the "big bus".

4. Missouri.—1. Springfield-Monett. We sought to discontinue this small line in May because it was producing roughly 10 cents a mile. It was suspended and an October hearing was held. No decision has been rendered.

2. We sought to reduce one of three schedules a day run by Trailways between Kansas City and Omaha. This schedule was producing roughly 60 cents a mile. The schedule reduction was suspended both by the Missouri Commission and the Iowa Commission and no hearing date has been set in either state.

5. Oklahoma.—Oklahoma sets every service reduction for hearing automatically and refuses to allow any such change to go into effect without such a hearing. This produces incredible results. For example:

1. Muskogee-Tulsa. Trailways sought to reduce one schedule between Muskogee and Tulsa that now runs 5 days a week between the two towns in the middle of the

night. Revenue on this run is less than 20 cents a mile, and we have three other round trips between these two points. A hearing has been set for October 30.

2. Muskogee-Westville. Trailways sought to reduce this schedule with little patronage from 7 days a week to 5 days a week. It is also set for hearing.

3. Liberal-Texhoma-Tucumcari. Trailways sought to eliminate a schedule running from Liberal, Kansas on the Oklahoma line across the Oklahoma panhandle to Texhoma and then across the Texas panhandle and into New Mexico terminating at Tucumcari. Texas approved the schedule discontinuance, but New Mexico and Oklahoma suspended their segments. As a result, we are now running two stub services, one from Liberal across the Oklahoma panhandle to Texhoma and return and the other from Tucumcari, New Mexico to the Texas border. We have surveyed the New Mexico segment and in the 14 days of the survey, we carried one passenger.

6. Texas.—Texas automaticallly suspends schedule changes when any protest, no matter how frivolous, is filed. For example:

1. Van Horn-San Antonio. Trailways sought to reduce one of three schedules between these two points that was generating less than 60 cents per mile. This was experimental service added earlier in 1981. The Texas Railroad Commission suspended the filing and has not yet set it for a hearing.

2. Brownsville-Del Rio. We sought to reduce one of three schedules between these two points. This schedule was producing revenue of less than 80 cents per mile. We just added this service May 20. It has been suspended and no hearing set.

7. Wyoming.—We filed to abandon our route from Omaha, Nebraska through Cheyenne and Rock Springs, Wyoming to Salt Lake City, Utah. Although this is our only schedule over the very same route, Greyhound has *nine* schedules over the very same route. We surveyed our intrastate traffic in Wyoming and determined that it produced 6 cents per mile. Wyoming refused our request and has set the case for hearing.

Although this is far from an exhaustive list of unreasonable state actions, it is representative of the insurmountable problems that Trailways and other bus carriers meet when they attempt to rationalize their systems to respsond to or to anticipate changing traffic patterns.

Even a cursory examination of these schedule changes reveals that they are rational management decisions that should be quickly approved. The state's failure to do so not only ultimately contributes to the weakening of bus service in the particular state where the decision is made, but also has a negative ripple effect in that it forces carriers to make larger cuts in other states where these regulatory roadblocks do not exist. An example of the phenomenon is Trailways' actions to make deeper cuts in the Northeast Corridor, where the traffic is overwhelmingly interstate and in Florida, which is deregulated.

If there is to be any real benefit from regulatory reform, there must be legislation that mandates rapid state response to bus schedule changes and preemption of state decision making where states force carriers to run unproductive service. Without such preemption, the present strangling of the interstate bus system by irrational state actions will continue.

Senator **DANFORTH**. Mr. Prins.

Mr. **PRINS**. Mr. Chairman, members of the subcommittee, I am Daniel Prins, president of Jefferson Lines. Jefferson offers regular route service in the following States: Minnesota, South Dakota, Iowa, Missouri, and Arkansas. That accounts for roughly 75 percent of our business. Additionally, we operate charters and tours nationwide for the remaining 25 percent. We are headquartered in Minnesota. The operational center of our company is in Missouri.

Jefferson strongly supports H.R. 3663 for two main reasons: It will help the bus industry provide better service to its customers, No. 1; and as a result it will thus help the bus industry to retain its financial strength.

There are three things in particular I like in this bill: It restricts the States oversight, it provides some rate flexibility, and it facilitates the initiation of new service. In view of the time constraints, I would like only to expand on the importance of State preemption.

It is often assumed that State regulation is there to protect the customer. That, gentlemen, is a total fallacy. Due to the arbitrary, unreasonable manner in which State bureaucrats currently exercise management prerogatives, the public does not get what it wants and deserves. I will give you some examples of that.

Between late 1979 and late 1981, the Missouri commission saw fit not to grant us an intrastate rate increase. After four hearings, 4 weeks of field audits, 2 years of litigation, $20,000 in legal fees, hundreds and hundreds of hours in management time, finally the Missouri commission conceded the case without a final hearing. We got a grand total of $80,000 in revenue, not profits, revenue.

We have applied, on December 28, 1981, for a 1982 increase. Incredibly, a hearing is not scheduled until October 1982. We will lose the whole year without an increase, and that is simply an intolerable situation—we are continuing to lose money on our intrastate operations.

Now, the essence of this is not that we lose money in Missouri. The essence is not that we are being treated with discrimination by the commission. The essence is that the public does not get what it needs and what it deserves, as in the example of Mr. McCracken.

Kansas City-Joplin, which is familiar to you, Senator Danforth, is an ideal bus market. It is 200 miles apart, poor air service, a very significant traffic flow. We have no incentive at this time at all to get into new bus service, simply because of the regulatory oversight.

Not to single out Missouri, we have two similar cases where the same rules apply. There is a dire need in the State of Iowa for service between Ames, Iowa, the home of the university, and Des Moines. There is a need for special service between Rochester, Minn., the home of the Mayo Clinic, and Minneapolis-St. Paul. We simply have no incentive to get into that because we don't want to end up in the claws of the State supervisors.

Jefferson in these cases has all elements necessary to start operating service. We already serve the markets, we have the operational expertise, we have the financial resources and equipment to do it, and we have the demonstrated willingness to spend the marketing funds to make a service like that go. The only deterrent here is that we end up in the claws of the bureaucracy.

If we have to forgo opportunities like this due to the restrictive State policies, it is the public's loss. If nothing else, curbing burdensome State regulation makes H.R. 3663 worthwhile. With the additional rate flexibility and the relaxed regulations regarding new service, I would wholeheartedly support the bill as it is.

Thank you very much.

[The statement follows:]

STATEMENT OF DANIEL F. PRINS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, JEFFERSON LINES, INC.

Mr. Chairman, members of the committee, my name is Daniel F. Prins. I am President and Chief Executive Officer of Jefferson Lines, Inc. We are headquartered in Minneapolis, Minnesota. I have held my current position since 1978. Previously, I held management positions with Procter & Gamble, Trans World Airlines, and Viacom International.

Jefferson Lines is a regular route and charter bus operator founded in 1920. We operate under authority issued by the Interstate Commerce Commission and each of the States we serve. Jefferson operates a regular route network extending from Minneapolis to Texarkana serving the states of Minnesota, South Dakota, Iowa, Missouri and Arkansas. (See Attachment 1)

We are also a major provider of charter-and tour services nationwide. (See Attachment 2) We have division offices in Minneapolis, Des Moines, Cedar RApids, Kansas City, Joplin, Ft. Smith and Little Rock. Although our headquarters are in Minneapolis, Minnesota, the center of our operations is in Missouri. Our Equipment Control function is based in Kansas City and our entire Revenue Accounting is based in Joplin. Our two Missouri divisions account for the majority of our charter volume as well as equipment allocation.

Jefferson, as a private corporation, must strive to provide an adequate return on investment to our shareholders. To accomplish this objective we believe the best course is to insure that our customers are provided with safe, reliable, and enjoyable service. We thus offer top quality equipment, the expertise of a highly-trained and productive work force, and continued service innovations and improvements.

I wish to emphasize that I personally am a company employee, not an owner or a shareholder in Jefferson Lines. My long-term job security and compensation depend entirely upon the Company's performance. As will become very clear, both our shareholders' return on investment and company progress have been seriously hampered by excessive regulatory constraints. I therefore urge this Committee to enact HR 3663 as expeditiously as possible.

As a newcomer to the intercity bus industry three years ago I was able to apply my experience from other industries in an effort to stimulate Jefferson's growth. Having been exposed to the advent of airline deregulation during my days at TWA, I started immediately upon my arrival at Jefferson to prepare for the long-term potential regulatory reform could create in the intercity bus industry.

Under my direction we modernized the fleet, expanded schedules, improved services, opened new sales divisions, and introduced discount fares (see Attachments 3 and 4). We also experimented with new tour ventures (see Attachment 5) and implemented aggressive marketing efforts. Customer reactions were extremely favorable resulting in significantly increased awareness for Jefferson's services.

Jefferson's business results have been better than the industry average over the past three years. Our progress has been severely frustrated, however, by the stifling regulations we have to deal with at the federal and, especially, the state level. In other industries that I am familiar with our innovations would have resulted in far greater service improvements for our customers because we would not have had to deal with the costly, time-consuming, and discouraging red tape that burdens the bus industry.

To be specific, we are currently encountering three major obstacles: (a) irrational regulatory oversight at the state level, (b) inflexibility in rate setting, and (c) unacceptable delays in the review of applications for new service.

For example, while most state regulation is extremely cumbersome, the situation in Missouri is simply intolerable. In recent years the Missouri Public Service Commission has applied the same economic analysis to small bus fare increases that it applies to multi-million dollar electric company applications.

Between 1980 and mid-1981, Jefferson was subjected to 4 weeks of on-site audits by the Missouri Commission's staff. Four depositions were taken and four different hearings were held. The Commission finally resorted to an unprecedented one-year suspension of the requested increase which was designed to augment our revenue by only $80,000.

In 1981, after two years without rate relief, while compunded inflation totalled 38 percent, after over $20,000 in expenses for attorneys and expert testimony, and hundreds and hundreds of hours of valuable management time, the State of Missouri conceded without a final hearing. Nevertheless, Jefferson's intrastate Missouri rates remain the most unprofitable in our entire system. On the average, they contribute on a cents per mile basis 27 percent less than our interstate routes and continue to require what I feel is a legally questionable cross-subsidization from interstate riders. For interest, Jefferson filed another rate increase application for 1982 on December 30, 1981. We have not yet had the courtesy of a reply and no hearing has been set.

The impact of this type of regulation is not just that we operate at a loss. It also means that we have absolutely no incentive to promote our services in Missouri because we would merely be increasing our losses. Jefferson operates between Kansas City and Joplin, Missouri. We would like to stimulate travel between these cities through additional service, advertising and promotions if we could charge a reasonable fare. Today our one-way intrastate fare is only $12.50. The comparable interstate fare is $17.10. State regulations are, therefore, acting as a barrier to improved service for the travelling public.

While the above concerns an intrastate rate matter, we continuously encounter similar arbitrary behavior from Public Service Commissions regarding schedule changes, proposed service improvements, etc. In order for the bus industry to attain financial health and serve the public well, the ability of state bureaucrats using managerial perogatives must be curbed.

Another absolute need for the bus industry is the ability to set interstate rates freely in the marketplace. We are in competition with two unregulated (and federally subsidized) transportation industries: Amtrak and the airlines. As if that were not enough, we compete with the mightiest adversary of all, the private automobile. As Jefferson has proven, we can and will compete, but we cannot do so effectively with one hand tied behind our back. We must be allowed to set prices without unreasonable interference and the inevitable regulatory lag. If the regulators would just get out of the way, the bus companies could become stronger and the public would benefit from the service and pricing options that increased competition produces.

Lastly, in order for Jefferson to continue growing we need to be able to react in a timely fashion to opportunities which present themselves in the charter and tour areas. Tourism is either the number 1, 2 or 3 industry in all states we serve (except for Iowa where it is the 4th largest industry). As a major provider of transportation we work closely with all segments of the tourism industry in our states. Jointly, we bring vacation possibilities within the reach of tens of thousands who otherwise would not be able to afford a vacation.

In order to serve the public well, Jefferson needs the ability to expand without endless, costly, and unnecessary application procedures. Last August, we applied for expanded rights in the states of Minnesota, Iowa, Missouri, Kansas, Arkansas and Oklahoma. It took the Interstate Commerce Commission seven months to review our application. We now have to await the outcome of possible appeals or, in the absence of same, we have to count on additional administrative delays. This means that we may not be able to expand our operations in time to take advantage of the upcoming travel season. Needless to say that this is a serious setback both for the travelling public and our company.

For interest, the inability of the Interstate Commerce Commission to react within a reasonable period to applications such as ours is ironic. Jefferson, like other bus companies, competes with a myriad of unlicensed carriers. While the Commission just sits on our applications (and thus curtails our ability to serve the public well), it condones, through its highly ineffective enforcement policies, this illegal competition.

Mr. Chairman, members of the Committee, by any standard, Jefferson Lines is a well-run company. We enjoy an excellent reputation in the bus and tourism industry. We are considered to be an innovative, marketing-oriented organization. About forty percent of our drivers are members of the prestigious Million Mile Club, an organization sponsored by the National Safety Council to recognize drivers with one million miles acccident-free driving. Our maintenance is of such high standards that we service large numbers of our competitors' buses.

In order to optimize our passengers' safety, we train our drivers in a nationally acclaimed Defensive Driving Course we have developed (see Attachments 6 and 7). Due to our excellent operational standards, our insurance company has lowered our insurance rates which were already among the lowest in our industry by another 10 percent for the 1982 premium year.

In spite of all this, we are shackled by regulations, and our shareholders continue to get less than a fair return on their investment. The public will be better served and the bus companies will become financially stronger if current regulation is relaxed. We strongly support H.R. 3663. I hope you will do the same, and enact it into law as soon as possible.

Thank you very much.

Senator DANFORTH. Gentlemen, thank you.

When we were considering airline deregulation, a considerable amount of time and attention was paid to the relative strength of various airlines, and it was thought that in working out the deregulation scheme we had to take into consideration those relative strengths.

It is my understanding that in the intercity bus market Greyhound now has about 65 percent of the market. Should we consider the great strength of Greyhound in enacting legislation? Is there a possibility that after deregulation Greyhound would be in a position to pick off the more lucrative markets and thereby damage the competitive position of smaller carriers?

Is there also or a possibility that Greyhound, in picking off the larger and more lucrative markets, would jeopardize bus transportation for the smaller markets?

Mr. McCracken. Mr. Chairman, I think first, there are a lot of numbers bandied about. You used the figure 60 percent. The number I have is that Greyhound transported 17 percent of the people in intercity bus service in, I think the last year was 1980.

But be that as it may, Greyhound has about 100,000 route miles. I understand the Trailways system is just about equal to that, and that is looking at a nationwide basis. There are many areas of the country where Greyhound is not the larger of the carriers. There are many strong regional carriers in the business.

I do not think the fear that you say some might have is well placed. You have to recognize, like the airline industry, the larger the carrier in the bus industry today, probably the higher its labor costs. The airline experience would show that the new entrepreneurs and some of the smaller carriers have been able to expand and give the larger carriers a darn good run for their money, and successfully at that.

So that I do not think that this concern about Greyhound in 47 or 48 States is a concern. Many carriers very successfully compete with Greyhound under regulation. I think it would be the same under less regulation.

Senator Danforth. Mr. Knappen?

Mr. Knappen. Just to have a non-Greyhound carrier address that point. Yes, I think it is a very major concern. Greyhound is so large in our industry that, to make an airline analogy, if you had a United Airlines that was three times larger than its present market share, owned the Boeing Co. and owned an airport in every major city and town across the United States, you would have a rough analogy to Greyhound's domination of the intercity bus market.

It is a very real threat. And, as we tried to outline in our testimony, we feel that they have used that market power in what we would consider anticompetitive activities in the past. One thing we like about H.R. 3663 is it focuses on this problem. It is not totally free entry, and we think, exactly the point you are making, that the Greyhound monopoly share is why.

You will see in the entry standards that there is a provision that an application in effect will be denied if the regular route structure of another carrier is threatened. Now, that really would only apply in a large carrier applicant, small carrier protestant case, and is exactly the kind of protection that should be built in, and I really think is a large reason why the small carriers support the bill.

If it is stricken, I think you will find many small carriers who will not be in support of the bill.

Senator Danforth. Mr. Prins.

Mr. Prins. I am not concerned about Greyhound's strength. The dinosaurs were the largest animals ever known to men, and they are no longer with us.

We as a small company are more flexible, we have a better labor contract, we are closer to the market and know how to react faster.

We are better marketers. Our marketing budget on a CPM basis is, compared with Greyhound, 3 to 1. At these levels we are outspending them. We are more innovative, so if Greyhound would like to compete with us, let them come.

Mr. **Knappen**. I would just have to add, to make the record complete, that Mr. Prins' company is 40 percent owned by Greyhound. That may have eased his mind somewhat.

Mr. **Prins**. I would like to reply to that.

In that, that is all fine and good. As it now is, first of all, our policies are totally different in many key issues from Greyhound. Second of all, I am not so sure that after deregulation, Greyhound will be interested in retaining their ownership in our company.

Senator **Danforth**. Senator Cannon?

Senator **Cannon**. That is very interesting. Mr. McCracken, bus companies have complained bitterly about the delays involved with State regulatory agencies in approving fare increases. Have you had the same experiences with fare decreases, or have you ever had any?

Mr. **McCracken**. Yes, we have had them, and yes, we have had the problem. And actually in some ways, it is worse on a State basis. I can give you a recent example.

Texas International Airlines came out with some advertisements about a month ago. "Airline offers bus fares." And between various places they said, we are going to make it cheaper to go by air than bus. In a number of the markets they put that promotion into—between points within the State of Texas.

Now, we consulted with our traffic and legal people and attorneys in Texas and asked what can we do to go about trying to meet these fares, because we obviously do not want our passengers diverted to air. And they said, well, really not much because if you file a rate decrease with the Texas Railroad Commission, it is probably going to take a minimum of 60 to 90 days for the hearing and everything before you might get approval.

Well, of course, by then, you know any promotional fare usually is of short duration, not more than 90 days, so we were forced to just swallow the whole thing and see some traffic diverted.

There was an article I understand, I believe in Fortune last Friday that claims—and I have not checked it out—but claims People's Express says they have taken away 18 percent of Greyhound's traffic between New York and Norfolk, Va., by putting in reduced one-way fares. With the ICC it takes us 30 days to lower a one-way fare. We cannot react to this new airline competition.

Senator **Cannon**. You described regulation as a security blanket and make a pretty strong case for simply getting rid of it. If, as you say, regulation has inhibited innovation, stifled experimentation, precluded flexibility and generally deprived both carrier and customer of the benefits that flow from free competition, why aren't you supporting deregulation instead of the House so-called reform bill?

Mr. **McCracken**. I believe the House bill is deregulation. It is obviously not total deregulation. I think, as you have heard, this industry is made up of I think it is 1,100 or 1,200 carriers of varying size. They were able to come together and agree on an approach.

We thought it was important to come in here, not like other industries, but to come in united behind something. And that something was, first, an ABA bill and then the House bill which is even more reform-minded than the ABA bill.

I think that certainly, if there is a need or benefit to go further than that bill, there are provisions in the bill for oversight on an annual basis for 4 years, and you could address it at that time.

Mr. KNAPPEN. Could I just add to that, Senator? I think that total deregulation would have a lot of benefits for the bus industry, and the point I was trying to make is that if you are going to have total deregulation of entry and total removal of antitrust immunity, then it must be coupled with total removal of all rate regulation, and total removal of all exit control. And that is total deregulation.

If you are going to go as far as Secretary Lewis suggests, then I would certainly suggest that you must go the whole way or you will destroy what is already there.

The reason that we are really supporting H.R. 3663 is that it addresses the major problems, but at the same time, it goes as far as we think a piece of legislation can go, given these concerns about small community service.

Senator CANNON. One State recently announced that any schedule change would require an oral hearing. How long would you ordinarily expect a case involving an oral hearing to last, and how much would it cost? Do you have any estimates on that?

Mr. MCCRACKEN. It would have to be an estimate at best. Senator Cannon, I believe—I know the State you are speaking of—other States have done the same thing recently. If you hire an attorney and he takes a day to prepare and a day for hearing, you are talking at least $1,000 to $2,000 in legal fees. You are going to have schedule personnel and traffic personnel and accounting personnel. I would, off the top of my head, have to say something like that direct and indirect costs, you are talking about $10,000 minimum.

The schedule change might have been a change of 5 minutes for a longer meal stop. It is not productive.

Senator CANNON. You said your last two fare increases in the State of California were approved in their totality and had no opposition and the PUC scheduled no hearings, but those two cases, one of them took 359 days and the other one 245 days. Do you have any idea why they took so long?

Mr. MCCRACKEN. I have some ideas, yes, sir. I do not think the California Public Utility Commission, when it is dealing with major phone companies and gas companies and electric companies, wants to spend too much time or has the staff to devote to us. I do not think the time they took is directly related to how much time they put in on the subject. I do not think they probably put in more than a few hundred man hours.

Senator CANNON. Just because of the volume of their work on other matters, then?

Mr. MCCRACKEN. That is right.

Senator CANNON. I have a letter here from one of my constituents who is a bus driver, but does not identify the company he works for. He urges reform and gives some personal examples of the present regulatory system.

He states that he has to go, for example, on his run he has to go through Toquerville, Utah, on his run to Salt Lake City, which he says adds an extra 16 miles daily, but he has never picked up or discharged a passenger at that location.

I think that may be one of your runs. Are you familiar with that situation, and can you tell me about it if you are?

Mr. McCRACKEN. I know from the map it is on the route between Las Vegas and Salt Lake City, just north of St. George.

Senator CANNON. Right.

Mr. McCRACKEN. I would have to surmise that it is a situation we run into frequently throughout the country. When the interstate highway came along and was built, the ICC said well, you can operate some of your buses over the interstate highway, but we are not going to give you a real certificate. We are going to give you what is called deviation authority and you still have to serve the so-called old road.

In this case, I am surmising that Toquerville, which looks to be 6 or 8 miles off of the Interstate 15, is that type of situation. I looked in the back of the Rand McNally and it is not even listed so it would have a population I would guess of less than 100 and I guess it would not produce traffic. People would be—more than likely, I would think if they lived in Toquerville and had to stand by the side of the road to wait for the bus, they would rather go to St. George and wait inside in a bus station. That is only about 15 miles and they could buy their ticket and have a cup of coffee and wait.

Senator CANNON. Mr. Knappen, given the Trailways testimony before the Texas Legislature and your testimony here, would you tell us whether those dire predictions made in Texas came true in Florida?

Mr. KNAPPEN. Well, nothing has happened in Texas because the railroad commission has not acted on the UPS application which is opposed by the entire bus industry as well as others.

The point that I would want to make, though, about the UPS application case is that it really demonstrates the point that the bus companies in Texas—as a good example of many other States—are highly restricted in terms of where they can run and when they can run and how much they can charge. And UPS was asking for an application which was irregular route, nonscheduled service. In other words, they said they want to run wherever they want to, whenever they want to. And that sounds very good.

And perhaps if we had substantial preemption and we were also freed up from those restrictions, it would be a different situation in Texas. At least, I would hope it would be. But that UPS case really demonstrates the problem that we have got at the State level because of the restrictions imposed on us.

Senator CANNON. What has been your experience in competing against Greyhound in Florida, since total deregulation there?

Mr. KNAPPEN. We both have made minor adjustments in our regular route service in Florida. There really has not been what I would call a substantial change in the competitive situation in Florida.

There is one distinct difference, however, with regard to the small carrier-large carrier problem, and that is that in Florida, Greyhound already has all of the major regular route service that it could possibly want. And the only gaps that Trailways had at the time of deregulation were on Greyhound routes. So you did not have this large carrier-small carrier problem; that is, the large carrier stamping out the small carrier. That just was not tested there.

But the regular route results really have been somewhat of an increase in service primarily brought about by small carriers feeding either into the Trailway system or the Greyhound system.

Senator CANNON. Have the closed-door restrictions of State regulatory agencies placed a burden on Trailways' ability to serve interstate commerce?

Mr. KNAPPEN. Yes, sir, it has been a very major burden I think both for Trailways and for other carriers. A good example would be the State of Ohio. Our major interstate routes run from Cleveland west to Chicago through Toledo, for example, but we cannot pick a passenger up in Toledo to take him to Cleveland or vice versa.

That has greatly weakened our ability to serve not only the people of Ohio, but because of the fact that our system is an interlocking grid, it has really prevented the development of a competitive interstate system in the highly populated States surrounding Ohio, such as Michigan and Indiana.

Senator Cannon. Mr. Prins, your testimony mentions a particularly lengthy and expensive rate case in the Missouri Public Service Commission. Could you describe your experience with that case, and was it a typical rate case?

Mr. PRINS. I am afraid it was. It was very confusing, especially from the point of view that at the time that it stated, the commission felt the need to equate us with the utility companies, then eliminated the past practice of looking at the bus companies jointly, so it started to look at them one by one.

We, unfortunately, were the first guinea pig and we were subjected to whatever bureacratic delay that would be available to go through this procedure. And it ended up in a final hearing where the Missouri commission did not even attend in recognition that our intrastate rates were unprofitable.

The case dragged on for I think more than 1½ years with endless redtape, and lots of expenses that could have been used otherwise. My board of directors—just to give you an idea—after I told them the good news that after all this time, $20,000 in expenses, the result was an $80,000 revenue increase, told me that I really should have spent $20,000 to get out of Missouri.

The reason I did not do that was that I was hopeful that H.R. 3663 would finally be enacted and we could do away with this kind of Mickey Mouse situation.

Senator CANNON. Thank you, Mr. Chairman.

Senator DANFORTH. Thank you. Gentlemen, thank you very much.

The next witness is J. R. Snyder, national legislative director of the United Transportation Union.

STATEMENT OF J. R. SNYDER, NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION, ACCOMPANIED BY EDWARD D. FRIEDMAN, LEGISLATIVE COUNSEL

Mr. SNYDER. Thank you, Mr. Chairman, and members of the committee. My name is James R. Snyder, and I appear here today as a witness on behalf of the United Transportation Union to offer comments on the House-passed bill, H.R. 3663, proposing deregulation of the intercity bus transportation industry. Our legislative counsel, Mr. Edward D. Friedman, is with me to assist in the presentation of our views.

At this time, we will summarize the views expressed in our prepared statement, which with the Chair's permission, we would like to have inserted in its entirety into the hearing record. Our full statement, please.

As you know, the United Transportation Union is a transportation labor organization that represents some 200,000 transportation employees. I serve these thousands of members in the office of national legislative director. As an elected officer to this position, it is my duty to support proposals in the Congress which are consistent with the interest and welfare of these members, and to oppose those which are not.

Although this bill presents some problems to us, changes have been made in areas of our main concern, covering employment stability and safety. These adjustments fall short of what we were attempting to reach, but on the whole, move in the right direction. At the very least, we urge acceptance by this committee.

There can be no disagreement with the point that the intercity bus system needs encouragement and support for the improvement of its overall condition as to revenue structures and service.

The bill recognizes that the program which is described is likely to have some impact on employment. Accordingly, it also recognizes some provision should be made to cushion the impact. The bill, in some measure, attempts to do this. It provides that carriers, No. 1, must recall their own protected furloughed employees when vacancies occur. And in addition, No. 2, must provide fair consideration for employment of any application within the protected group that has been furloughed by another carrier.

Protected employees are those who have at least 2 years' seniority as carrier employees and who have lost their jobs as a result of the discontinuance or reduction of service of the type described in sections 16 and 17 of the bill.

The Interstate Commerce Commission makes this determination of the eligibility and is required to maintain a roster of job vacancies of all class 1 carriers. The ICC will make this information on job vacancies available to all protected employees. It is further directed to assist these employees in finding employment with other carriers.

This bill addresses a second important topic of major concern to us. This deals with the use of the citizen band radio on intercity buses. The bus operators have strong views on this subject based upon highway experience, covering billions of over-the-road miles. These drivers insist that citizen band radios are needed on intercity buses to improve both safety and service on the highway.

CB radios on highway vehicles have proven their value as instruments promoting highway safety and security. They serve as highway and radio links, are useful in summoning help for medical emergencies, both on and off the bus, and in warning against dangerous driving conditions such as ice, snow, accidents, road blockage and similar events.

CB radios enable the motor vehicle operator to avoid traffic delays caused by accidents, construction and repair work, or by weather conditions, assuring on-time performance and equipment availability. All of this promotes customer or rider satisfaction.

Trucking companies long ago recognized the safety advantage of the use of CB equipment to the point where today, an over-the-road truck without a CB radio is the rarity.

The Tranportation Department and the Interstate Commerce Commission and the Federal Communications Commission have agreed on a Federal policy to encourage the use of citizens band radios to promote highway safety and service.

The bill moves in this direction. It directs the Secretary of Transportation to arrange for a thorough study of this issue and upon appropriate findings consistent with the Federal policy, to issue regulations providing for the use of the CB radios under the basis of prescribed guidelines.

Although we believe that there is sufficient data on hand to justify the use of CB radios, the provision for further study and for the administrating hearing on the House-passed bill moves in the right direction.

For all of these reasons, we urge that this committee accept these provisions of this bill for employee protection and employee safety. We are grateful to the committee for providing us with this opportunity to express our views on this subject. Thank you very much.

Senator DANFORTH. Thank you, Mr. Snyder. Senator Cannon?

Senator CANNON. Thank you, Mr. Chairman. You make a strong case that the use of CB radio equipment will promote safety and on-time performance. Why do you think a Federal rule is needed to get bus companies to see the merits and let their drivers use that equipment?

Mr. SNYDER. The drivers, through their representatives or through our representatives, have tried to get the bus companies to recognize this, and they have failed to do so. They have failed to do so, and as a result of this, there was the feeling on the House side that in order to get the legislation, in order to get some recognition of the CB radio, that it was necessary to incorporate it in the form of legislation. Senator Cannon.

Senator CANNON. What about the labor protection provision that you described in your prepared testimony? That provision is in the House bill. Has the administration supported that, or do they just do nothing with respect to that in the request that they have up here?

Mr. SNYDER. Senator Cannon, this morning I was just a little bit late for Secretary Drew Lewis' statement as to this recommendations to this committee on certain changes by the administration from the House bill. In leaving, his counsel informed me that there was no objection to the labor protection.

Now, this was the counsel, John Murphy. So to my knowledge, the administration really did not get around to taking a position on this on the House side. Of course, I supported the legislation as based upon these provisions. If they do not have the administration—if it comes down on it before this and they are opposed to it and opposed to one or both of these provisions on employee protection or the CB radios, then we would have to withdraw our support.

Senator **CANNON**. But those are the two key issues as far as you are concerned, in your support?

Mr. **SNYDER**. That is correct.

Senator **CANNON**. Thank you, Mr. Chairman.

Senator **DANFORTH**. Thank you. Thank you very much, Mr. Snyder.

Mr. **SNYDER**. Thank you.

[The statement follows:]

STATEMENT OF J. R. SNYDER, NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION

My name is J. R. Snyder. I appear here today as a witness on behalf of the United Transportation Union to offer our comments on the House-passed bill, H.R. 3663, proposing deregulation of the intercity bus transportation industry. Our legislative counsel, Edward D. Friedman, is with me to assist in the presentation of our views on the subject of this bill.

As you know, the United Transportation Union is a transportation labor organization representing some 250,000 employees engaged in the major modes of surface transportation. I serve these thousands of members in the office of national legislative director. As an elected officer to this position, it is my duty to support legislative positions in the Congress which are consistent with the interests and welfare of these members and to oppose those which are not.

Although this bill presents some problems to us, accommodations have been made in areas of our principal concern dealing with employment stability and safety. As I shall explain in a few minutes, these adjustments fall short of what we were attempting to reach but, on the whole, provide a degree of employee protection and safety which satisfy our minimal position. At the very least, we urge their acceptance by this Committee.

There can be no disagreement with the point that the intercity bus system needs encouragement and support for improvement of its overall condition, both with respect to revenue, structure and service. The bill attempts to serve this purpose.

A program of this kind, as contemplated by this bill, must recognize that employee confidence in employment security as well as in job satisfaction must be taken into account to improve its chances of success.

Recent agreements between the United Transportation Union and Trailways and between the Amalgamated Transit Union and Trailways illustrate this point.

Trailways asked UTU and ATU to extend all contracts into 1983 with a freeze on all wage increases and COLA adjustements during the calendar year 1982. Its extraordinary request was a part of an overall program designed to maintain full employment to the extent possible while attempting to overcome serious problems arising from a combination of nationwide economic depression, inflation, double digit interest rates and ridership losses. These problems appeared to be particularly pressing upon Trailways because of its route structure and because it, unlike Greyhound, relies entirely upon ridership for its revenues.

As in this bill, jobs and job stability are the stakes. Working with Trailways, we developed an agreement which has promise of achieving this end.

These arrangements include, among other things, a new national seniority roster, providing broader employment opportunities and job stability, a new format for collective bargaining on a national basis, and a joint procedure for improving overall productivity, service, scheduling and ridership and for reducing operating costs wherever possible.

The UTU membership voted overwhelmingly to accept the proposed 1982 wage freeze in return for these new procedures providing a greater degree of employment stability.

There is little question today, particularly in the field of transportation, that job satisfaction means, among other things, job stability and career security. These are important parts of any program to increase productivity and to meet competition.

I report this to you because in our view this is precisely what this bill means to us.

A broad sweeping bill such as H.R. 3663 is bound to have a substantial impact on employment. The proponents claim that its enactment will promote financial stability, expand its service and ridership with little risk of serious loss of employment. There is little doubt, however, that there may be some negative impact on employment with some dislocation and possibly some reduction. These estimates of an exployment impact are based on little more than guess work.

It is thus imperative that this bill contain as complete a measure of employment security as possible. While the provisions of the bill in this respect do not go as far as we would like, it does move in this direction and provides what we regard to be a minimally acceptable basis of protection against adverse employment impact.

Section 27 of the bill guarantees that carriers (1) will recall their own protected furloughed employees to their jobs if, as and when vacancies occur, and (2) will guarantee fair consideration of all applications for employment by protected employees furloughed by any other carrier.

The Interstate Commerce Commission will maintain a roster of job vacancies of all Class 1 carriers which will be made available to all protected employees. The ICC is further directed to make every effort to assist these employees in finding other available employment with other carriers.

The class of protected employees covered by these provisions is limited to those with at least two years seniority as carrier employees who lost their jobs as a result of a discontinuance of reduction in service if a type described in Sections 16 and 17 of the bill.

Eligibility for protection under these provisions is to be decided by the Interstate Commerce Commission upon the basis of these standards.

Industry-wide preferential hiring rights covering employees adversely affected under the condition contemplated by Sections 16 and 17 are, of course, the ultimate goal. The House-passed bill takes a step in this direction.

This bill addresses a second significant topic of major concern to us. This deals with the subject of safety.

The issue involves the use of citizen band radios on intercity buses. The drivers represented by us hold strong views on this subject. Together they have accumulated highway experience, covering billions of over-the-road miles. They are virtually unanimous in their insistence that citizen band radios on intercity buses will make a significant contribution to safety and service on the highways.

CB radio equipped buses will benefit the public, the employer and the employees.

For the riding public, it has proved its value as an instrument promoting highway safety and security. It can summon urgently-needed asistance in cases of medical emergencies, both on and off the bus. It provides a valuable means of highway communication throughout the stream of motor vehicles using the highway, warning against dangerous driving conditions, fog, ice, snow, accidents, road blockages and similar events.

For management, it enables the operator to respond to reports of traffic delays resulting from accidents, construction and repair work, or from weather conditions, thereby assuring a more nearly "on-time" performance and improved equipment availability. This service will promote customer satisfaction.

For the employes, it provides all the benefits outlined above plus having at hand a "party line" radio link to other highway travelers whether bus, truck or auto.

Almost without exception, trucking companies encourage, or provide, CB radio equipment for their drivers. Long ago, they recognized the safety advantates of having such equipment available to the point that today an over-the-road truck without a CB radio is rarity.

A large precentage of automobilies using the highways have CB radios.

It is against this background, that the Department of Transportation, the Interstate Commerce Commission and the Federal Communications Commission have agreed on a Federal policy to encourage the use of citizen band radios to promote highway safety and service.

Section 25 of the bill directs the Secretary of Transportation to contract with the National Academy of Sciences to conduct a study on this subject. It directs that the study shall assess the extent to which the safety, health and convenience of passengers will be promoted by the use of these radios on intercity buses.

The bill further provides that the study shall be submitted to the Secretaries of Transportation and Commerce along with recommendations within six months following the letting of the contract. Upon receipt of the report, the Secretary shall initiate a rule-making procedure to determine whether or not citizen band radios should be allowed on motor uses. It is also provided that if the Secretary determines that CB radios will promote the safety, health and convenience of passengers, he shall issue regulations to this effect, authorizing such use upon the basis of prescribed guidelines.

In our view, there is sufficient data on hand to justify enactment of legislative requirements directing that bus operators may use CB radios in the interest of highway safety. Nonetheless, the provision in the House-passed bill moves in the right direction and provides the foundation for a determination to this effect to be made within a reasonable time.

For all of the foregoing reasons we urge that this Committee accept the provisions of this bill which we have described as a minimum basis for employee protection and employee safety.

We are grateful to the Committee for providing us with this opportunity to express our views on this subject. Thank you very much.

Senator Danforth. The next witnesses are John Shapleigh of the Missouri Public Service Commission and Cornish Hitchock, director of the Transportation Consumer Action Project.

STATEMENT OF JOHN C. SHAPLEIGH, COMMISSIONER OF THE MISSOURI PUBLIC SERVICE COMMISSION, REPRESENTING THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS; ACCOMPANIED BY PAUL RODGERS, ADMINISTRATIVE DIRECTOR AND GENERAL COUNSEL; RITA BARMANN, DIRECTOR OF CONGRESSIONAL RELATIONS; AND MICHAEL FOLEY, DIRECTOR OF FINANCIAL ANALYSIS

Mr. Shapleigh. Thank you, Mr. Chairman and members of the subcommittee.

I would like to indicate to the subcommittee that I have with me today Mr. Paul Rodgers, the National Association of Regulatory Utility Commissioners administrative director and general counsel; Rita Barmann, the director of congressional relations; and Michael Foley, our director of financial analysis, who are available if the need should arise.

The National Association of Regulatory Utility Commissioners, which I am representing today, is a quasi-governmental nonprofit group which includes among its members the motor carrier regulators from the 50 States and other jurisdictions.

I am one of five members of the Missouri Public Service Commission which regulates motor carriers in the State of Missouri. As a representative of the motor carrier regulators of the 50 States, I appreciate very much the opportunity that the subcommittee and the chairman have given me to testify today.

I commend the committee for undertaking regulatory reform of the intercity bus industry. We support deregulation where it is feasible and beneficial to all parties concerned. We agree with the finding contained in the House bill that a safe, competent, competitive, financially sound, and fuel-efficient motor carrier bus system is vital to the interest of the country.

We in particular seek to protect the members of the general public. And in that regard, all public utility commissioners and motor carrier regulators among the 50 States are required to balance the interests of the companies and the public at large.

I would like to submit my written comments to be accepted in the record and briefly summarize them here.

In many respects, my testimony in behalf of the State bus regulators in this country can be related to—and if I might paraphrase a statement of a former President and fellow citizen or former citizen of the State of Missouri, President Truman—the paraphrase would be that, "The bus stops here." That is not to be taken as literally true, but for thousands of bus riders in this country in tens of thousands of communities, it may be true.

And I would like to mention to the committee my conviction that with respect to the protection of the general bus-riding public among the various States, their fate does rest with this subcommittee.

I would simply like to summarize a few of the six basic points which I feel are important. First of all, as State regulators dealing daily with intercity bus companies and the general public, we see that intrastate intercity bus service is a public transportation utility function in many respects. And by that, I mean that the users of the bus service in many cases do not have an alternative. There is a very loose analogy that could be drawn to the other utility-type functions of electric, gas, and telephone. This would be true of the rider who, for medical reasons, needs to get to that town served by bus or to her county seat or to his or her State government capital.

Second, H.R. 3663 as it is now written, ends effective government oversight of this important public transportation utility function by eliminating effective State regulatory authority.

This result is not sought by the public served by the intercity bus industry. It is not sought by the State regulatory community.

The bill as written will visit several undesirable effects upon the public, including higher rates, service cuts, and deprivation of an effective local forum where their interests can be considered.

Fifth, the bill is inconsistent with current Federal efforts to return to State jurisdictions those matters best handled by persons closest to and most familiar with them.

Sixth, based upon all of the foregoing, the bill as written will be perceived by the public as anticonsumer in its effects.

We recommend deletion of those provisions of the legislation which would preempt State authority, and we have some solutions to offer in lieu thereof, which are contained in my testimony.

If I might just take 1 minute, I would like to offer into the record, if the chairman and subcommittee would permit, two additional items. One is the statement of the Alabama Public Service Commission.

And second, Mr. Chairman and members of the committee, I would like to submit some press clippings that I have been able to accumulate over the past 6 months or so, showing basically several things. One is that there is concern out there about bus deregulation. No. two, the Public Service Commission of Missouri, in particular, has been effective in making decisions, in some cases going along with the companies' suggestions and then where the evidence has justified otherwise, not exactly acceding to their requests.

Thank you very much, Mr. Chairman.

[The statement follows:]

STATEMENT OF JOHN C. SHAPLEIGH, COMMISSIONER OF THE MISSOURI PUBLIC SERVICE COMMISSION FOR THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and Members of the Committee, my name is John C. Shapleigh. I am a Commissioner of the Missouri Public Service Commission and am here today as a spokeman for the National Association of Regulatory Utility Commissioners, commonly known as the "NARUC." Accompanying me today are Paul Rogers, NARUC Administrative Director and General Counsel; Rita Barmann, NARUC Director of Congressional Relations; and Michael Foley, NARUC Director of Financial Analysis.

The NARUC Is a quasi-governmental, non-profit organization. Our members include regulatory bodies of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands, engaged in the regulation of carriers and utilities. The mmission of the NARUC is to improve the quality and effectiveness of regulation for the benefit of the American public.

The members of the NARUC appreciate this opportunity to make known their view on H.R. 3663, a bill proposing the Bus Regulatory Reform Act. We wish to commend the members of the Committee for undertaking regulatory reform of the intercity bus industry. As State commissioners regulating intrastate operations of these motor carriers, we support deregulatory measures where they are feasible and beneficial to both the industry and the general public.

While we would heartily agree with the Congressional finding in the bill "that a safe, competitive, financially sound, and fuel efficient motor bus system is vital" to the Nation, the NARUC is also concerned that the needs of the general public be protected in any legislative efforts to reform the Federal regulation of the intercity bus industry.

As such, we must express serious reservations regarding certain language contained in this regulatory reform proposal as it relates to the protection of the American public from unreasonable fare increases as well as a general decline in the quantity and quality of bus transportation services.

SERVICE TO SMALL COMMUNITIES JEOPARDIZED

One of the principle concerns of the NARUC is Section 16 of the Act which pertains to exit policy. The U.S. intercity bus industry which presently serves in excess of 350 million revenue passengers per year operates in 15,000 cities, towns, and villages—of which only about 1000 are served by other common carriers. In addition the industry serves some 50,000 flag stops located along its existing route network throughout the United States. Thus in the vast majority of communities the intercity bus is the only available common carrier.

As one can readily appreciate, the loss of bus service to small rural communities could prove to be devastating not only to the individual bus riders who depend on the service but to the communities at large who are finding themselves increasingly isolated, particularly in light of diminishing airline and Amtrak availability.

The exit policies spelled out in Section 16 of the Act enable The Interstate Commerce Commission to reverse a State regulatory action which disallows a carrier's request for discontinuance of service. Any carrier denied permission to abandon or severely reduce service by the State regulatory body can merely petition the ICC for relief. If no one protests within 20 days, the Act requires the ICC to reverse the State decision and grant the service reduction. Furthermore, if one were to register a protest, the burden of proof in the matter would shift to the party filing the protest.

Thus, in spite of the fact that a State regulatory agency may have already conducted a thorough examination in the matter, the carrier can easily exempt itself from proving that the service reduction is warranted by merely "appealing" the question to the Federal Agency. Not only does this place the State commissions in a subservient position to the ICC, but it provides the carriers with a running start against anyone who would attempt to question the need for the service abandonment. The NARUC sincerely doubts that the thousands of small towns and cities—critically dependent upon bus transportation—will be able to defend their interests if Section 16 of the Act is written into law.

In addition, the NARUC would urge this Committee to take note of the fact that the track record of the ICC in the area of service abandonment has been extremely permissive. In separate reports, the U.S. Department of Transportation and the Management Analysis Center document that during the 1970's the bus carriers discontinued serving over 1800 communities located throughout the United States.[1] The general practice of the carriers has been to discontinue service to a community along an existing interestate route and hope that nobody at the ICC takes note. This point is also acknowledged in the report of the House Committee on Public Works and Transportation which accompanies the Bus Regulatory Reform Act. According to the House report, the ICC restrictions on exit have had only a "minimal effect in the past" while State regulatory review of service abandonment has been "more severe."[2]

FEDERAL PREEMPTION OF INTRASTATE RATEMAKING

The NARUC is also concerned with the preemptive language contained in Section 17 of the Act which would "Federalize" the intrastate ratemaking process. Section 17 imposes a 120-day decision deadline on the States (60 days in the case of a rescheduling request) after which the ICC would prescribe intrastate rates and practices. While the State commissions do regularly process rate cases within these time frames, such a rigid deadline would not allow adequate time for evidentiary hearings and a thorough investigation and consideration of the issues if complications were to arise in a contested rate case.

In addition, carriers would be free to appeal State ratemaking or scheduling decisions to the ICC. The States would then be forced into a position of having to justify to the ICC as to whether or not the State action was reasonable and not burdensome on interstate commerce. We are also concerned with subsections c, d, and e of this Section which require the States to establish uniform standards and procedures consistent with those of the ICC within a two year period following the efective date of the Act.

INDUSTRY RATIONALIZATION OF FEDERAL PREEMPTION

Industry representatives are quick to rationalize the need for Federal preemption of State regulatory functions on the grounds that the State commissions do not process cases in a timely manner and that the rates authorized by the States have impaired the financial viability. Let's set the record straight on both of these points.

Recent reports prepared by the industry purport to document regulatory lag "horror stories" experienced by the carriers. One such "story" involved the Colorado Public Utilities Commission and Trailways in a discontinuance of service case decided last year. Trailways maintanined that the commission took 178 days to process the case and that the lag cost the firm in excess of $25,000.00. Yet upon closer scrutiny by officials of the Colorado PUC it was revealed that the case was processed in 162 days and that fully 52 days of the total represented delays and postponments requested by the applicant. We're confident that the State regulators can provide plenty of "horror stories" of their own regarding the delays in rate proceedings caused by the carriers.

With respect to the financial condition of the industry, the most recent quartely report on the status of the industry published by the ICC provides some interesting food for thought. The report notes that for the 12 months ended September 30, 1981 the Nation's large Class I motor carriers of passengers earned a rate of return on equity well in excess of 10 percent while Greyhound and Trailways ended approximately 14 percent and 12 percent respectively. Though these earnings are off somewhat from the higher returns earned by the industry 12 months earlier, the earnings are respectible when one considers the general deterioration in the national economy during the past year.

IMPLICATIONS OF FEDERAL PREEMPTION

The NARUC can only view the radical preemption language of Sections 16 and 17 as yet another regrettable example of creeping Federalism which attempts to perpertuate the myth that Washington knows best in areas of joint Federal/State interest. Clearly, the net effect of these sections of the Act will be to shift the most critical aspects of the ratemaking process to the ICC—an action which is obviously inconsistent with proposed Federal efforts to return to State jurisdiction those matters best handled by the people closest to and most knowledgeable fo them.

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[1] "Intercity Bus Service in Small Communities"; published by U.S. Department of Transportation; January, 1980; p.ii. "Deregulation of the Intercity Bus Industry"; published by Management Analysis Center; January, 1981; p. 22.

[2] Bus Regulatory Reform Act of 1981; House Report No. 97-334; published by the House Committee on Public Works and Transportation; November 17, 1981; p. 42.

Impairing State jurisdiction over rate increases and over the discontinuance of regular-route service would be highly detrimental to the general public. Those affected by a proposed rate change or curtailment of service would, in the case of ultimate decision-making before the ICC, be without the accessible local forum that the State commission now provides. It is improbable that a citizen of a rural town, for example, would have the time, the financial resources, or even the means to travel to Washington, D.C., to protest a proposed change before the ICC. Morever, the ICC does not have the time or resources to hear them and therefore their complaints would be dealt with in impersonal "paper" proceedings.

FEDERAL/STATE REGULATORY COOPERATION THE NARUC PROPOSAL

In lieu of the heavy-handed, preemptive, inequitable balancing of Federal/State regulatory interests which would result from enactment of the language contained in Sections 16 and 17, the NARUC would like to offer language amending the Act in the spirit of *true* Federal/State cooperation.

The language of the amendment (see Attachment #1) would provide for the creation of a Federal-State Joint Board for the purpose of establishing rules governing the jurisdictional separation of property and expenses, between interstate and intrastate operations, of motor carriers of passengers.

The creation of this board would provide regulators, both Federal and State, with an excellent forum for conducting the difficult task of establishing uniform criteria for all the States in separating the cost of buses, terminals, salaries and other expenses according to the ratio of intrastate to interstate passenger miles or any other appropriate ratio as adopted by the Joint Board.

The Carriers have loudly complained that the State commissions have prescribed rates less than those prescribed by the ICC. It is the position of the NARUC that if this is a problem in some States, the way to address it is to separate the costs between intrastate and interstate operations as is done in other industries subject to joint Federal and State regulation. In this way, each agency will be bound by the true costs, plus a reasonable allowance for profit, in fixing rates and in acting on service abandonment applications.

This amendment would enhance the effectiveness of the Bus Regulatory Reform Act without trampling on the historical jurisdiction of the State regulatory agencies and therefore has the full support of the NARUC.

Thank you very much.

[Attachment 1]

NARUC Proposed Amendments to H.R. 3663; a Bill Proposing the Bus Regulatory Reform Act of 1981

1. Section 6, paragraph (2) and Sections 16 and 17 of H.R. 3663 are hereby stricken and the subsequent Sections are renumbered accordingly.

2. Title 49 of the United States Code is hereby amended by inserting between Sections 11501 and 11502 a new Section to read as follows:

FEDERAL-STATE COOPERATION IN THE REGULATION OF MOTOR CARRIER OF PASSENGERS ENGAGED IN INTERSTATE OF FOREIGN COMMERCE

Section 11501a. (a) The Interstate Commerce Commission shall establish within thirty days after the effective date of this Act the Federal-State Joint Board which shall be empowered to determine within six months after the effective date of this Act, and to revise from time-to-time thereafter as apporpriate, rules governing the jurisdictional separation of the property and expenses, between interstate and intrastate operations, of motor carriers of passengers authorized by the Commission to transport passengers in interstate or foreign commerce.

(b) The rules adopted by the Federal-State Joint Board under subsection (a) shall be binding upon the Commission and each State authority to assure reasonable and just rates and economically feasible service.

(c) The Federal-State Joint Board shall be composed of the Chairman of the Commission, two other commissioners of the Commission designated by the Commission, and two State commissioners nominated by the national organization of the State commissions, as referred to in sections 10344(f) and 11506 of this title, and approved by the Commission. The Chairman of the Commission shall serve as the Chiairman of the Joint Board. The State members of the Joint Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(d) Any rulemaking of the Joint Board shall be subject to chapter 5 of title 5 of the United States Code. Any final action taken by the Joint Board shall be subject to judicial review in the same manner as a final decision of the Commission in a motor carrier proceeding.

Senator DANFORTH. Mr. Hitchcock.

STATEMENT OF CORNISH F. HITCHCOCK, DIRECTOR, TRANSPORTATION CONSUMER ACTION PROJECT

Mr. HITCHCOCK. Thank you very much, Mr. Chairman. Having testified before the last Congress on the truck and household moving bill, we appreciate the invitation to be here this morning. And I would like to submit for the record the prepared statement as well as a somewhat lengthy article dealing with the issue.

During the testimony by Chairman Taylor, Mr. Chairman, you asked why should we pass this bill, what is the public interest or public concern? And I think the answer is probably best provided in an ad in the Washington Post 3 weeks ago by Texas International Airlines, where they said, "Airline offers bus fares." You can go to Houston for $20 less by air than you can if you take the bus.

And this is not unique. People's Express, Pacific Express, and some other carriers have been offering fares that are lower than the bus, and advertising them as such.

It seems that there is something wrong with this type of result, particularly when you consider that the bus industry has lower costs than the airlines and when you consider that the poor, the elderly, minorities, people with modest incomes rely disproportionately on bus travel.

And it seems that the major reason for the current problem in the industry stems from its regulation, which has kept fares high, limited new entry and competition, and done little historically to prevent a decline of service, particularly to rural America.

I find particularly significant the fact that during the 1970s service was dropped at 1,800 communities across America. That is far more than were lost prior to airline deregulation when there was debate about the effects of that system.

With respect to H.R. 3663, there are some additional reforms in line with what the administration has proposed that would be particularly helpful from the consumer standpoint. First of all, going further with respect to antitrust immunity and ending immunity for general rate increases, between early 1979 and the end of 1981 the ICC approved general rate increases that allowed fares to rise an aggregate of 57 percent. During the same time, the Consumer Price Index went up only 35 percent. And from the public figures we have, that 57-percent increase is higher than the cost of Greyhound or Trailways.

Chairman Taylor is correct. They did set aside part of a general rate increase that came in during the last 3 years, but they rubberstamped each and every one of them. 57 percent is too much.

Also, with respect to entry, what we would recommend is moving toward a fitness only standard and sunsetting all entry regulation by January 1, 1985, except for the safety and insurance regulation, which would continue.

And I think even viewed in that context, there are some additional reforms which might be useful to try to get the benefits of an easier entry system into effect early, in particular, allowing any fit carrier to serve a small community of under 100,000 or a community not receiving regular service, simply by filing a notice of intent to serve with the ICC.

It is, in effect, the system that the ICC adopted during the summer of 1979, in response to the Iranian oil embargo and fuel hikes. And during that 3-month period they got half as many applications as they had received in all of the 3 years prior to that time.

There is a desire out there to provide additional service. And we suspect that the current time consuming and expensive proceedings have limited the ability to get in quickly and provide service.

Another reform which would be either implemented immediately on its own terms or as a prelude to phasedout entry regulation, would allow small carriers to provide regular route service just by filing the notice of intent. This would again provide for better service faster, particularly in rural America.

And if Congress is concerned about the ability of smaller carriers to compete with Greyhound, this proposal would let small carriers rationalize their route system in the marketplace.

To the extent that you maintain case-by-case processing, we would encourage you to follow the 1980 Motor Carrier Act but eliminate the public need test entirely and just adopt fitness only.

With respect to the zone of pricing freedom, two comments. One, it is too big. And two, Congress should not take the lid off fares until it is assured that there is open entry, the same model as in the Airline Deregulation Act.

As for exit, we think that the notice and substitution approach originally proposed by the ICC is preferable to maintaining the current policy where carriers can end service or drop it to very low levels. Under the proposal the Commission originally proposed, and we endorse, the last carrier route would have to give 30 days' notice and give the community a chance to find a replacement, another carrier a chance to come in or try to make arrangements. This we think is a proper role for the local and State authorities to play. It prevents disruption. And it is not unlike the essential air service program in the airline area.

As for preemption, you have to think in terms of a national transportation policy here instead of a Balkanized system, as some of the other witnesses spoke of. We believe that some form of preemption is necessary, at a minimum, that which was provided in the House bill. Or perhaps a preferable approach is again the one originally proposed by the Commission, which is modeled after the Staggers Act.

That concludes my time. Thank you.

[The statement follows:]

STATEMENT OF CORNISH F. HITCHCOCK, DIRECTOR, TRANSPORTATION CONSUMER ACTION PROJECT

Mr. Chairman, members of the subcommittee, on behalf of the Transportation Consumer Action Project, (TCAP),[1] we appreciate the invitation to appear before

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[1] TCAP was founded in January 1979 as a non-profit consumer group to advocate the interests of consumers of transportation services. Our members include 15 consumer groups in 14 states. With respect to intercity bus service, we have participated in various proceedings before the In-

Continued

you on H.R. 3663, the Bus Regulatory Reform Act of 1981. Improving intercity bus transportation is an important issue to the traveling public, and we commend you for taking up the issue.

Now that Congress has voted to deregulate or reform regulation in the airline, railroad, trucking and household goods moving industries, it is time for reform in the intercity bus industry. The bus passenger is often forgotten when transportation policy is set, even though bus travel is a critically important means of transportation for many people in this country. The intercity bus is the most fuel efficient form of intercity transportation. In addition, bus companies serve 14,600 communities, of which 14,000 receive no other form of intercity public transportation; by contrast, the airlines provide scheduled service to 650 communities, while Amtrak serves 550 points. Bus companies also transport more people annually than either the airlines or Amtrak, and bus riders consist disproportionately of the elderly, the young and people with modest incomes.

I would like first to give a passenger's-eye view of the problems in bus travel today and then comment on ways that H.R. 3663 can be strengthened and improved. Our position, in brief, is that ICC regulation of the intercity bus industry has harmed the consumer by boosting fares, limiting competition and allowing service to decline in rural America. We believe that H.R. 3663 could be vastly improved by including provisions to let the sun set on ICC entry proceedings and all antitrust immunity, let carriers operate to any points they choose if they can meet safety, insurance and operational fitness requirements of the Department of Transportation, and place greater reliance on the antitrust laws and antitrust-type enforcement to police any market abuses. I will also discuss two concerns which have frequently been raised against far-ranging reform—the need to assure good rural service and the ability of the antitrust laws to police a "deregulated" concentrated industry—and show how those considerations can be addressed in the legislation.

I should add that a more detailed analysis of these issues, put in the context of the history and present economic structure of the industry, appears in an article I wrote entitled "Regulatory Reform in the Intercity Bus Industry," which appears in the current University of Michigan Journal of Law Reform, which is being submitted for the record.

I. INTERCITY BUS TRAVEL: A CONSUMER'S VIEW

Fare levels.—First of all, bus travel is not as cheap as you might expect. In many markets where buses compete with Amtrak, the coach fare is a little lower, but in some markets, the unrestricted coach fare is actually higher than going by Amtrak or on a discount air fare. For instance, Texas International Airlines ran an ad in the 14 February 1982 Washington Post claiming that they could fly people from Baltimore to Hartford, New Orleans, San Antonio, Houston, Los Angeles or Albuquerque at less than the quoted bus fares. People Express, a new airline based in Newark, advertises that it is cheaper to fly than to take the bus. Pacific Express makes the same claim for the flights it plans to operate on the West Coast, and for the past ten years Southwest Airlines has made it cheaper to fly across Texas than to drive. As airline deregulation takes hold and the economy improves, I think such low-fare service will increase at more cities across the country. Considering the cost advantages that buses have over airplanes and other modes of travel, it is disturbing that bus fares are so high, particularly since bus travelers are disproportionately made up of those persons who can least afford inflated fares.

Collective faresetting.—Second, bus fares are not set through the normal competitive dynamics of the marketplace, but through OPEC-style collective ratemaking and general fare increases which keep fares high. Members of the industry rate bureau received general rate increases allowing fares to rise 57 percent between early 1979 and late 1981, which is higher than carrier cost increases at Greyhound or Trailways and higher than the 35 percent increase in the Consumer Price Index. Several of those proposals were protested, but the ICC nonetheless gave the industry virtually everything it wanted. In one respect, though, this is in keeping with a long, if dubious, ICC tradition. Between 1935 and 1973, the ICC investigated only

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terstate Commerce Commission affecting bus passengers. We petitioned the ICC to adopt a relaxed entry standard in a proceeding which is still pending, and we have commented on rulemaking proposals to give bus companies greater fare flexibility, to amend the baggage liability rules and to provide access to handicapped travelers. We successfully protested bus company tariffs which violated ICC rules on consumer protection, and we have published an informational pamphlet, "Facts and Advice for Bus Passengers," which summarizes passenger rights. With respect to regulatory reform generally, TCAP testified in the last Congress on proposals to revise ICC regulation of the trucking and household goods moving industries.

three proposed rate hikes. In the first two (in 1951 and 1970) the Commission allowed the full increase. In the third investigation in 1973, a five percent proposal was trimmed back to three percent. We find it hard to imagine that this was the only occasion during an entire 38 year period that an excessive fare hike was proposed, particularly when you consider fares are set collectively, regardless of the profitability of the individual carriers on the individual routes.

Service.—As for service, the ICC has for many years prevented head-to-head competition over the same route, thus trying to avoid so-called "wasteful duplication of mileage"—and along with it competition and customer choice. Once a company gained access to a market, it knew it was unlikely to face new competition and could spend enough money on ICC lawyers to make certain that did not happen. How much incentive does such a system give incumbent bus companies to improve service or experiment to gain new travelers?

Limited new entry.—As for new entry, ICC application procedures are so costly and cumbersome that they may deter companies from even bothering to apply. In July of 1981, the Federal Register carried 1551 applications from new and existing motor freight companies. By comparison, only 79 applications for new bus service were received, and of these only 44 sought regular route authority. Is there really any interest, though, in obtaining new authority? We think there is. Back in the summer of 1979, at the height of the Iranian oil crisis, the ICC voted to let bus companies start service anywhere they wanted simply by filing a form. In that three month period the Commission received half as many applications as they had received in the past three years. This is impressive evidence for a leaner, simpler, less expensive entry policy which does not impose costs on small and rural carriers.

Little exit regulation.—If the ICC does not make it easy for companies to get into a market, what does it do to make sure that the companies it licenses are providing good service? To say "very little" would be charitable. The Commission has not effectively regulated market exit, as ICC Acting Chairman Alexis testified at the House hearings last summer, and there is nothing to prevent companies from letting service deteriorate to such a point that no one wants to go by bus, and it becomes more convenient to drive or stay home.

Declining service to rural America.—Finally, ICC regulation has not prevented serious deterioriation of service to rural America. One of the traditional justifications for ICC regulation, especially a tight entry policy, is that it assures good service to small cities and towns by existing carriers. It is true that bus companies stop at 14,600 communities, and while that figure may sound impressive by itself, it doesn't tell the real story. During the 1970's, bus companies dropped scheduled service at roughly 1800 communities across America. In other words, 15 communities lost bus service each month for a ten year period. As this decline was going on, was the ICC certificating any new companies or companies based in rural America to pick up the slack during the last decade? No. During one three year period in the 1970's, the Commission received 49 bus applications, most of them for scheduled regular-route service. The ICC granted 87 percent of the applications sought by Greyhound or Trailways but only 33 percent of the applications filed by smaller companies.

Summary.—This combination of high fares, collective pricefixing, limited consumer choice and declining service to rural America may explain why passengers flock to the airlines, Amtrak and their own automobiles. Greyhound may claim "it's such a pleasure to take the bus," but Trailways is probably closer to the truth when it told the ICC that passengers "would prefer to travel by plane, automobile, or even truck, if given the chance and will pay a premium to do so." Ironically, ICC regulation hasn't helped the industry much either. Although the financial picture has improved slightly over the past year or so, the industry's financial health is still worse than it was a decade ago and bus ridership is still below the level it was in 1970.

This situation is unfortunate, and it is time for a change. Bus travel is too important to our national transportation system to allow this decline to continue.

II. RECOMMENDED CHANGES

What is the solution? Ultimately, that will depend on the industry, how it perceives public demand and moves to satisfy it. Meeting that demand, however, requires flexibility, which is just not available under the current regulatory regime. H.R. 3663 takes some steps to remedy the current situation, but it is still deficient in key areas. Frankly, we question whether there is any way to make the necessary improvements simply by tinkering or fine-tuning the system. As the earlier discussion pointed out, the ICC has done a generally poor job of serving the public in this area, and there is little reason to believe that a future Commission would do a significantly better job than the current or past one in this area. Just as Florida ended all intrastate transportation regulation in July 1980 and Arizona voted to follow suit a few months later, we suggest that a sunset-oriented approach is likely to yield more results than passing a reform bill now and having to come back every few years to make further adjustments.

With that introduction, then, let me discuss some of the key areas of H.R. 3663 and identify those issues on which the Senate should go further. I should add that a number of the proposals should be considered on their own individual merits if you should choose not to incorporate them as elements of an overall sunset proposal.

1. *Collective ratemaking.*—While H.R. 3663 does end antitrust immunity for single-line rates and some joint-line rates, effective 1 January 1984, the bill fails to remedy the worst abuse in this area, general rate increases. There is no sound reason for letting bus companies continue to sit down with each other and decide whether fares should go up three percent, six percent, eight percent or whatever, particularly when two carriers dominate the intercity market and when bus companies have widely disparate costs. As noted earlier, between early 1979 and late 1981 the ICC approved general rate increase allowing fares to rise 57 percent even though costs at Greyhound and Trailways did not rise that much and even though the Consumer Price Index rose 35 percent during the same period. General rate increases would be per se illegal for non-regulated firms and immunity for such fleecing of the public should be stopped. We would recommend that antitrust immunity for all forms of collective faresetting be terminated six months from the date of enactment, not 1 January 1984.

2. *Entry.*—H.R. 3663 is also deficient because it fails to set a date for sunsetting ICC licensing for all fit carriers. To continue the requirement that carriers obtain an ICC certificate every time they want to add a new point or points to their system perpetuates an expensive, unwieldy, time-consuming process which deprives the public of new service in a timely fashion, deters small companies from even bothering to seek new authority and makes it hard for rural communities to find replacement service.

What we would recommend is ending ICC licensing proceedings on 1 January 1985, after which date bus companies would be able to start service at any point they choose, provided they have a license of fitness from the Department of Transportation attesting to their ability to meet federal safety and insurance requirements. As a reform which can be implemented immediately, we suggest allowing certain types of carriers and certain types of service to commence simply on notice to the Commission and without having to go through ICC proceedings, even the limited "fitness only" proceedings contemplated by H.R. 3663. The reason for this suggestion is that it facilitates quick entry into the market, as happened when such a "notice only" provision was tried during the summer of 1979. In addition, avoiding the legal expense, time and paperwork required even in "fitness only" hearings can encourage new entry more easily.

The following reforms, then, are proposed to take effect upon enactment, and they can be seen either as a transitional way to let carriers rationalize their route systems and prepare for sunset or else as worthwhile reforms to improve service in the short term even if Congress does not include a sunset provision:

Allow any fit carrier to begin regular-route service—upon notice to the ICC and without a licensing proceeding—to a community of under 100,000 population; a community not served regularly by another bus, rail passenger or airline company; or a community in which another bus company is suspending service. This step will immediately promote new entry to small communities across America.

Allow any small fit carrier to begin regular-route service to any community upon notice to the ICC. This step will let smaller carriers rationalize their route system and let them position themselves in the market against Greyhound, a concern frequently expressed by smaller companies, although the evidence to date in Florida and the fact that smaller companies may have a lower cost structure suggest that these fears are overstated.

If any case-by-case processing is retained, it should be according to the entry standards of the Motor Carrier Act of 1980, which require applicants to prove they are fit (although we support ending the "public need" test); require protestants to prove the authority sought is "inconsistent with the public convience and necessity"; limit the extent to which "diversion of revenues" can be considered by the ICC; and limit automatic rights of intervention to parties with a stake in the outcome. If our two open entry proposals are adopted, the cases that would be processed individually would mostly be applications from Greyhound (and possibly Trailways) on larger intercity routes. If Congress is concerned that applications from Greyhound could drive smaller companies out of business, it could retain the Commission's so-called Liberty Trucking standard, which allows the ICC to deny an application which threatens to drive a competitor out of business not only on the route in question, but system-wide. Here again, the Florida experience makes such a provision seem unnecessary, and there may be consumer advantages if new entry mean replacing interline service with through service. Accordingly, if Congress should retain a case-by-case approach, it should only be for a brief period, *e.g.*, two years.

Along this line, we note that section 6(b)(1) of H.R. 3663 would allow denial of an application if issuance "would impair, contrary to the public interest, the ability of the [incumbent] carrier to provide a substantial portion of the regular-route passenger service which the carrier provides." Viewed in its most favorable light, this could be interpreted as a codification of Liberty Trucking, but the House Report adds a gloss suggesting that this protest standard could be more broadly used to block new competition and prevent alleged "creamskimming." TCAP believes that such an interpretation could negate the other entry reforms and, if the Senate should retain this language governing protests, it should be appropriately narrowed.

3. Zone of pricing freedom.—H.R. 3663 creates a zone of pricing freedom ten percent above and 20 percent below the fare in effect one year earlier and lets the ICC extend these boundaries by ten percent if competitive conditions warrant.

There are two flaws with this approach: (1) the upward zone is too big. If the ICC authorizes the extra ten percent, fares could rise unchecked by 44 percent in two years, which is way too much for an industry dominated by two firms; (2) fare flexibility is not tied to entry, which should be considerably liberalized before loosening the lid on fares. We would propose the model in the Airline Deregulation Act, which creates a zone of five-percent-up-50-percent-down, effective immediately, and holds off on additional upward pricing flexibility until four years after entry reforms have taken effect. This two-step approach is particularly important, since there may be reservoirs of monopoly power which should be diluted before carriers are given freedom to boost fares without any check from the ICC.

4. Exit.—H.R. 3663 is deficient because it leaves the current ICC non-policy untouched, thus facilitating abandonments, especially at rural points. A useful entry reform would include establishing a "notice and substitution" approach, as was contained in the original version of H.R. 3663. Such an approach would require a carrier which is the last company serving a point to give notice to the ICC and pertinent state regulator when it wanted to suspend service. Before service could actually terminate, however, the state or local agency would have the opportunity to find a substitute carrier or make other arrangements to hold the existing carrier in place. Such an approach is important as a means of bettering rural service, as a transitional device, and also as a means of providing a meaningful role for local regulators, even though it constitutes more regulation than is presently carried out in this area. The policy question is whether it should be made permanent or ultimately phased out, which is the approach in the Airline Deregulation Act's Essential Air Service program and might also be a useful step here.

5. Pre-emption.—H.R. 3663 takes a creative, though potentially cumbersome, approach to pre-empting state regulation of the intrastate routes and fares. Some form of pre-emption, following, at a minimum, the approach of H.R. 3663, is essential in order to preserve and strengthen a national transportation system. Under the current system, there are admittedly short-term consumer benefits when state agencies require the continuation of intrastate service on interstate routes which the ICC has allowed a bus company to abandon. This is a costly way of assuring service, however, and liberalizing entry is a better means of improving service.

III. SOME ARGUMENTS AGAINST REFORM—AND SOME ANSWERS

Two principal arguments are raised against regulatory reform: (1) small communities would lose service, and (2) Greyhound is a monopolist in a concentrated market; under regulatory reform, it would drive everybody else out of the market. TCAP believes that both charges are overstated and that Congress can adequately guard against either eventuality by adopting the proposals we have outlined earlier. Let me deal with each argument in more detail.

A. Small community service

It may be argued that ICC regulation has treated bus companies as a form of public utility and protected small communities by requiring bus companies to serve not only dense, profitable routes between major cities, but also thin, unprofitable routes involving small communities. The short answer is that ICC regulation has not worked according to this model. Instead of holding bus companies onto small money-losing routes, the ICC let 1800 communities be abandoned during the 1970s. At the same time, a tight entry policy helped keep replacement carriers from picking up the slack. It must also be remembered that according to one study, commissioned by this Committee, ICC regulation has not prevented small town bus users from paying fares which, on an average, exceed the national average by 11 percent.

What the available evidence does suggest is that: (1) an open entry policy involving service to small communities would allow new carriers to enter markets on which incumbents are now losing money, and these new entrants may be able to offer service at lower cost; and (2) the "notice and substitution" policy on exit would provide a better protection to small communities than the ICC's current non-policy.

Two studies, one prepared at the request of this Committee and one prepared by DOT, support these conclusions. The principal conclusions of these analyses were:

Under current regulation, the quality and quantity of service in rural and small urban communities varies widely, with some communities receiving daily service, some receiving less than daily service and some receiving no service at all.

The Senate study of 38 small communities found the median number of departures each week was 50, ranging from a low of three to a high of 800. Arrivals also averaged 50 per week, within a range of three to 900. Most were on the low side, i.e., under 105.

Roughly 23 percent of all communities with a population between 2500 and 10,000 receive no direct bus service under the current regulatory regime. However, effective service is available to all but nine percent of these communities if one includes service to a point less than ten miles away.

There is reason to believe that new carriers could provide replacement service on an economical basis. For example, in 1978, it was estimated that the average expense per bus-mile for all Class I carriers was approximately $1.40, while the average expense for remaining Class II and III carriers was approximately $1.00. The significance of this data becomes apparent by looking at 58 routes Trailways stated where unprofitable. The average loss per bus-mile was $0.44 (ranging from $0.09 to $1.28), which suggests that revenues from a number of routes would be sufficient to attract lower cost carriers without the need of subsidies.

This information squares with evidence suggesting that there are no economies of scale in the intercity bus industry and that small carriers can compete economically with larger ones.

A 1978 study prepared by the Council on Wage and Price Stability and based on 1978 data, confirmed this disparity. The costs ranged for 43 Class I carriers from $0.90 to $3.70 per bus-mile, again with no correlation to output. Twelve carriers, including Greyhound, had costs above $1.40, and 31 carriers had costs below that level. This conforms with an earlier study, based on 1972 data, which found that average costs per bus-mile ranged from $0.45 to $4.10, and the variation was not correlated with output. Of the 72 carriers surveyed, 39 had average costs between 60 and 80 cents, Greyhound's average cost was on the high side at 86 cents per bus-mile.

As this Committee's study concluded, "In the near term, service to small towns seems no more threatened than that to larger cities. In fact, based upon the available financial data, it appears that the industry is healthier in rural areas than in highly urbanized areas."

Replacement service should be easily provided by smaller, more efficient carriers. In the airline area, small commuter airlines have gone a long way to fill the gaps, and while it is too soon to make any assessments about the trucking industry, it is likely a similar pattern will emerge. As for the bus industry, the data just cited suggest that smaller companies may be able to operate at lower costs than their larger competitors. Since the average bus trip is just over 100 miles, and since this would probably be feeder service, it should not be that expensive to operate.

Finally, it should be noted that the bus industry, unlike the airline industry, should find it easier to provide service to rural communities. Airlines can avoid serving a city by flying over the community; a bus company, by contrast, is likely to travel through many communities, and new service can often be provided simply by stopping at an intersection and opening the door. The marginal cost of serving an extra point in this fashion should be quite low.

B. Greyhound as monopolist

Some carriers have argued against regulatory reform on the ground that Greyhound is so dominent that it will drive other companies out of business through monopolistic practices. As argued more fully in the article I have submitted, there is reason to believe that the antitrust laws will check anti-competitive activities. Let me outline some of the anti-competitive conduct in which Greyhound could seek to engage if it were attempting to exercise monopoly power, discuss how it would be treated under the antitrust laws and suggest, as an alternative to reliance on antitrust laws, regulatory checks on anti-competitive behavior.

Setting predatory fares or rates.—Such pricing is doubtful in the intercity bus industry. Since fixed costs are relatively low, since entry barriers could be significantly lower under eased regulation and since the available data suggests that Greyhound is a high-cost carrier, compared with its competitors.

Because genuinely predatory rates seem unlikely to occur on economic grounds, then, there seems no need to provide a special remedy. If Congress does wish to provide such a remedy, however, it could continue the ICC's power to suspend and cancel such fares, even if they fall within a zone of pricing freedom.

Entering a market and driving out a competitor.—Under the Motor Carrier Act entry standard, Greyhound could not be denied a new route just because a smaller carrier serving that route might be driven out of that market. It seems unlikely that a court would find a violation of the antitrust laws if the relevant market were just a city-pair market. Moveover, even if Greyhound came along and replaced the smaller carrier, the public might benefit from the establishment of through service by a single carrier.

If however, Greyhound's conduct was designed to drive a company out of business, as in the *Mt. Hood Stages* case, the antitrust laws provide a remedy in treble damages and attorneys' fees, which can recover the smaller carrier millions of dollars. If Congress wishes to provide a more explicit protection, however, it could codify the *Liberty Trucking* standard, as discussed earlier.

Refusing to interline.—Given the reliance of large bus companies on smaller lines to provide them with "feeder" traffic, it is unlikely that a large carrier will refuse to interline unless there is a sound economic reason to do so. Even it it does refuse on economic grounds, the Supreme Court suggested that such refusal can still violate antitrust laws, if it is done by a dominant company to pressure or extend market share. If done wholly for anti-competitive reasons, again, as in *Mt. Hood,* there is a private remedy.

As a regulatory alternative, Congress could continue the present duty to interline, now codified at 49 U.S.C § 10703(a)(3). We note that a similar mandatory interlining provision was included in the Airline Deregulation Act to assure that commuter airline passengers would receive good connecting service.

Denying terminal access to a competitor.—This is a somewhat trickier area, since there are physical limitations in how many carriers can serve a single facility. The "bottleneck" theory of antitrust law suggests that a business or group of businesses in control of a scarce facility has an obligation to give competitors reasonable access, and if Greyhound were going to deny access to a new company, it could not do so because of an anti-competitive motivation. Carriers already allowed access to Greyhound terminals have the protection of a 1957 consent decree guaranteeing them non-discriminatory treatment by Greyhound.

As a practical matter, the necessity of interlining in the industry may be enough to assure access to smaller carriers, along with the threat of a private antitrust suit if an exclusion is based on anti-competitive grounds. If Congress wanted to assure terminal access on a non-discriminatory basis, it could codify such a provision, which presently exists for railroads, 49 U.S.C. § 11103. We note that H.R. 3663 proposes a study of the whole terminal access question, and we believe this would be a useful way of getting information for any further legislative action.

Engaging in unfair, deceptive and anti-competitive activities.—These include routing traffic around a bridge carrier, refusing to quote an interlining carrier's fares and arranging schedules to preclude connections with an interlining carrier. There may be times when such practices could be shown to be anti-competitive under the antitrust laws, as in the *Mt. Hood Stages* case. From a regulatory standpoint, such conduct could be proscribed under 49 U.S.C. § 10701, which states that a "practice related to transportation or service provided by a carrier * * * must be reasonable." Although broadly worded, this section can be used by the ICC to regulate "unfair or deceptive practices or unfair methods of competition," in the same way those practices are proscribed for airlines in section 411 of the Federal Aviation Act, 49 U.S.C. § 1381, and for non-regulated industries in section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

CONCLUSION

Meaningful regulatory reform of the intercity bus industry will go a long way to improve service to passengers, and the airline, truck and household goods moving reform bills adopted in the last four years provide some useful models. If anything, bus reform is one area in which Congress could start catching up with the states. On 1 July 1980 Florida became the first state to deregulate motor carriers, and the voters of Arizona overwhelmingly approved a referendum to the same effect in November 1980.

Although the Florida experience is too new to draw any final conclusions, the chairman of the House Committee which prepared the bill in Florida reported last year that (1) Greyhound and Trailways have increased their total weekly scheduled miles by eight and seven percent, respectively; (2) carriers are experimenting with new fare options; (3) charter service has improved and bus companies are using their equipment more efficiently; and (4) carriers have shifted regular-route service which has resulted in some service loss to communities, but in those instances, either another carrier enters the market, another carrier remains in the market, or there is another carrier providing service in a nearby community.

TCAP believes that similar public benefits would accrue to bus passengers elsewhere if the Subcommittee adopts a strong and comprehensive regulatory reform bill, and we are prepared to assist the Subcommittee in its efforts.

Let me add a few words on the recent ICC proposal to relax entry standards for motor carriers of property. We believe that the proposal to eliminate the "public need" step is an important first step towards sunset of ICC regulation of the industry. A continued requirement that qualified carriers must seek ICC approval every time they want to add a new route imposes costly burdens on the public and the industry and perpetuates inefficiencies which prevent service from being offered. Also, the necessity of having ICC staff pore over every application to see if the applicant has dotted every i and crossed every t is doubtful, especially in a time of budget cutbacks and austerity generally, where carriers and shippers need a maximum of flexibility and a minimum of ICC delay and red tape.

We have serious doubts about the proposal to redefine "fitness," however, to go beyond meeting current DOT safety and insurance requirements. A requirement of "operational" fitness could be a step backwards, as various separate statements by the individual Commissioners point out. Also the present "fitness" standard has not really had a chance to work yet. Accordingly, we think a better approach would be to (1) eliminate the "public need" test, effective upon enactment and (2) thereafter end ICC entry regulation and simply allow carriers that can meet DOT safety and insurance requirements to offer whatever service they choose. Thank you.

Senator DANFORTH. Thank you. Mr. Shapleigh, some of the witnesses on the panel, which included Greyhound, Trailways, and Jefferson, were quite critical of the Missouri Public Service Commission. Would you care to respond to that criticism?

Mr. SHAPLEIGH.. Yes, Senator Danforth, and I appreciate the opportunity to respond. I heard two statements this morning which were simply not true. I heard certain other statements where I am sure I could spend a good deal of time in response, which I will not do.

One of the two untrue statements was made by the president of Greyhound Bus Lines, where he said it takes over 1 year to get a rate increase. In Missouri that is simply not true. Mr. Prins, of Jefferson Lines, said 1½ years. And that is simply not true.

There is a statute in Missouri which, at the outside, gives the Commission 11 months within which to reach a rate decision. If we do not do so at the end of the 11-month period, the full rate request by the company would go into effect.

This is not to characterize the remainder of those gentlemen's testimony. But I do wish to correct the record on that point.

Senator DANFORTH. The basic thrust of their testimony, as I understand it, is that State public service commission regulation does not serve the public. For example, in the case of the St. Louis-Cape Girardeau-Memphis run, the passengers cannot be picked up or discharged in Cape Girardeau. With respect to Kansas City and Joplin, there is a similar kind of problem.

Would you comment on that? Is that a fair criticism of the present state of affairs with respect to the activities of the State public service commissions? Would not the consumer be better served if we could just preempt the activities of the public service commissions?

Mr. SHAPLEIGH.. In short, Senator, no. The view is not correct. The Missouri Public Service Commission is charged by statute and takes its job very seriously, that we are there to balance the interests of the corporate shareholders, of which there are hundreds of thousands that have contributed dollars to get these companies to continue operating, as well as the interest of the bus-riding public, if you will. And I have tried very hard in my testimony to maintain that balancing approach.

On the other hand, it is the obligation and duty of the company officers to their shareholders to adopt a total advocacy position on behalf of the bus industry. I think they have done an effective job of that this morning.

I have attempted to indicate that the Missouri Public Service Commission adopts a balancing approach.

I might also add one thing. In many of the cases which do involve delays, these delays are caused by the bus companies themselves in terms of requests for extension of time, protesting one another's changes in scheduling and rate increases. And I must say with respect to the scheduling of hearings, the Commission, I think, would be rightfully subject to criticism if we were to schedule a hearing after some audit of the company was undertaken so that our staff could present testimony on the condition of the companies.

Senator DANFORTH. Do you think that the people of Rolla would be better off or worse off if we passed the House bill?

Mr. SHAPLEIGH. Worse off, Senator, because instead of having the opportunity to present their views in Jefferson City in an effective forum, that forum would be moving to Washington, D.C.

I might add one thing, Senator. I am more worried about Springfield because I know what the first route drop would be. The commission ruled that the company did not present sufficient evidence in the case to discontinue a run extending in the Oklahoma direction. And I am sure that would be the first one to go.

Senator DANFORTH. Mr. Hitchcock, what do you have against the people of Springfield?

Mr. HITCHCOCK. Well, we have nothing against the people of Springfield, Senator. It is just a matter of looking at the whole picture here. You have one national system; there have been some disruptions that have been spoken to by some of the other witnesses—limitations on service. Mr. McCracken mentioned the inability to move quickly to respond to some of the fare cuts.

It is a question of how you actually do balance the need for a national transportation system, which has been discussed as far back as when Henry Clay was trying to get Congress to make internal improvements in the transportation system out West.

As for State and local needs, we think that the exit proposal in our testimony, which puts primacy with respect to the ICC and gives more of a responsibility to local agencies for local needs and local concerns, is a better balance than the current system.

Senator DANFORTH. Senator Cannon.

Senator CANNON. Thank you, Mr. Chairman.

Mr. Hitchcock, we often hear consumer representatives, particularly before the Consumer Subcommittee, urging more regulation of this or more regulation of that. As a representative of consumers, are you of the opinion that deregulation of the airlines and less regulation of trucking and household goods companies have benefited consumers or not?

Mr. HITCHCOCK. Senator, our belief is that the deregulation legislation which the Congress has passed in recent years has had net positive effects for the traveling public and also for the shipping public, both in the truck and in the household goods bill and in the airline bill.

I should add that on behalf of another group that I represent, I did appear on airline issues. And I think the public is better off than they would have been if the prior system had been maintained intact.

There is a distinction between economic cartel-type regulation over routes and rates and the social or safety type of regulation which is not being dealt with here, and which would continue even if this sort of economic deregulation bill were to be enacted.

Senator CANNON. Thank you very much, Mr. Chairman.

Senator DANFORTH. Thank you very much, gentlemen.

That concludes the hearing.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Statement of Hon. Harrison H. Schmitt, U.S Senator From New Mexico

Mr. Chairman, I would like to thank you and commend you on your speedy action on the deregulation of inter-city bus service.

Deregulation is an important goal of this Senator and this Administration. In the past few years, this committee has substantially deregulated airlines, railroads, household goods movers, trucks, and broadcasting. As a result of that legislation, we have seen air transportation become more competitive, the financial condition of some of our railroads has improved, and the cost of shipping material by truck has decreased in real terms. Since those laws have been enacted, we have seen considerable improvement in the efficiency and cost of our national transportation network. The American public has benefited greatly from deregulation.

It is my hope that efficiency and cost reduction will be achieved by enacting the bus deregulation bill now before us.

The bill sent over from the House is not a perfect one. The House bill is a "regulatory reform" bill—not a deregulation bill. I believe that the inter-city bus industry is ready for deregulation not just regulatory reform. Evidence from Florida's experience with near total deregulation certainly shows that the industry is ready for substantial deregulation. I hope that this committee, the full committee, and the full Senate will see the need for a deregulation bill that is fair to large and small carriers, large and small communities, and the bus riding public.

Statement of the American Insurance Association

The American Insurance Association (AIA) is a trade association which represents 150 stock, property and casualty insurance companies.

Ten of the fourteen insurers which write two percent or more of the commercial auto liability market are member companies of the American Insurance Association. The member companies of the AIA write a combined total of forty-five percent of the direct written liability premiums for commercial auto insurance in the United States.

H.R. 3663, the "Bus Regulatory Reform Act of 1981," would establish minimum financial responsibility requirements for interstate motor carriers of passengers. The minimum financial responsibility levels are based on the seating capacity of the motor vehicle, as follows:

More than fifteen passengers.—Not less than $5,000,000 except that the Secretary, by regulation, may reduce such amount (but not to an amount less than $2,500,000) for any class of such vehicles or operations for the two-year period beginning on the effective date of the regulation issued.

Fifteen or fewer passengers.—Not less than $1,500,000 except that the Secretary, by regulation, may reduce such amount (but not to an amount less than $750,000) for any class of vehicles or operations for the two-year period beginning on the effective date of the regulations.

Current Interstate Commerce Commission requirements for insurance coverage for motor carriers of passengers are $100,000 per occurrence and $300,000 in the aggregate (*i.e.,* total amount of compensation that may be paid out by the insurer during the policy period).

Higher insurance limits do not enhance safety

Increased levels of insurance coverage should be not viewed as an adequate substitute for regulation. Emphasis must be placed on the prevention of accidents rather than on the compensation of victims after an accident.

The Congressional belief that higher insurance limits will result in increased safety through the inability of the unsafe carrier to either obtain insurance coverage or obtain coverage at an affordable cost is a major misconseption. The report associated with the Motor Carrier Act of 1980, authored by the House Committee on Public Works and Transportation, states that "an unsafe carrier will have an increased premium, and totally unsafe carriers may not be able to obtain the insurance to operate. . . ." However, while insurers may refuse to provide coverage in the voluntary market due to poor accident history, financial instability, or failure to meet minimum safety standards, *all* motor carriers have access to insurance through a residual market mechanism (see Exhibit 1).[1] It must provide the limits and coverage required by law as long as a valid operator's license remains in effect and the policy premium is paid.

Since the residual market risk is not subject to ordinary insurance cancellation provisions, the primary incentive to comply with a safety program—loss of coverage—is nonexistent.

High financial responsibility requirements are antithetical to the purpose of the bill

Section 3 of the bill makes the specific finding that ". . . the existing federal and state regulatory structure has tended in certain circumstances to inhibit market entry, carrier growth, . . . and opportunities for minorities and others to enter the motor bus industry." The bill represents an attempt to remedy these deficiencies. Yet the cost of the high minimum insurance limits may undermine this objective by creating an entry barrier for the small and minority trucker. The rulemaker must be in the position to assess and control factors that disrupt the intent of the Act.

Insurance costs associated with high minimum limit requirements will form an increased portion of the bus owner-operator's operating costs. While many of the large, established owner-operators may be able to offset these increased costs through additional revenues, the new carrier may not have this luxury. Some mandatory costs, such as fuel, licenses and taxes, cannot be decreased. However, optional cost items such as safety programs, preventive maintenance and upgrading of equipment are controllable and may be reduced by the motor carrier. Reducing these operating expenses may well be the only alternative for the owner-operator who has newly-obtained operating authority and must compete for business through lower rates. Any reductions in the area of maintenance, upgrading of equipment and vehicle inspections could well be detrimental to the public safety.

Specific minimum levels of financial responsibility should be eliminated

The physical structure of the legislation constrains the rulemakers by including specific dollar amounts of insurance coverage. It is our belief that specific dollar limits should not be legislated. The establishment of dollars minimums should be delegated to the rulemakers. The regulatory agency which has the responsibility to implement the legislation needs the statutory freedom to equitably adjust the parameters of insurance requirements based on their investigations and expertise.

In testimony presented before the Surface Transportation Subcommittee on March 8, 1982, Drew Lewis, Secretary of Transportation, stated "rather than legislate specific minimum insurance levels, we would have them determined by the Secretary of Transportation through rulemaking." Testimony delivered the same day by Reese Taylor, Jr., Chairman of the Interstate Commerce Commission, also endorsed the concept of returning the authority to establish minimum levels of financial responsibility to the Department of Transportation.

The establishment of levels of insurance coverage by federal legislative mandate is a serious problem for the insurance industry. The demand for insurance coverage to service state and federal liability and compensation systems may exceed the industry's capacity to provide protection. The supply of insurance to service motor carriers of passengers is not perfectly elastic. It is largely a function of and limited by the general condition of the United States and foreign insurance markets and the competing demands for capacity from a variety of other risks.

The insurance industry's ability to respond to financial responsibility requirements contained in federal legislation will be severely strained in the next few years. Financial responsibility requirements which mandate levels of insurance coverage are currently found in the Resource Conservation and Recovery Act, the Motor Carrier Act and the Comprehensive Environmental Response, Compensation, and Liability Act. The utilization of financial responsibility certification as a prerequisite for doing business is also being considered for marine oil pollution legislation, and the Environmental Protection Agency is exploring the possible use of financial responsibility requirements to complement regulatory or voluntary actions under the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act. As the insurance industry struggles to respond to the need for insurance in order to meet the financial responsibility requirements in these existing laws, the capacity of the industry to respond to new demands for insurance coverage will be diminished.

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[1] Exhibit 1 was not reproducible and has been retained in the committee files.

High financial responsibility requirements will disrupt insurance industry procedures

The high minimum limits required by the bill could severely strain the operational capability of the assigned risk plan, which is the predominant residual market mechanism. Most residual market plans currently do not afford coverage limits in excess of $100,000/$300,000/$50,000, except in rare instances where special state requirements apply. An increase in the minimum limits to as much as $5,000,000 could seriously disrupt the assignment process. The consequences of receiving a randon assignment of a commercial auto risk will vary sharply, depending upon whether it involves an unregulated intrastate carrier purchasing $100,000/$300,000/$50,000 limits or an interstate carrier requiring a $5,000,000 limit. As previously indicated, the assignment of a risk requiring high minimum liability limits may strain the capacity of certain insurers.

In the commercial auto insurance market, sixty-eight percent of the premiums are written by insurers whose individual market share is less than two percent. Because of premium-to-surplus ratio requirements, which in most states allow for approximately $3 in premium for each $1 of surplus in measuring insurer insolvency, many insurers now retain only the state financial responsibility limits per risk (as low as $10,000/$20,000/$5,000) and reinsure the excess. The increased limits of the new Act will require greater reinsurance expense and renegotiation of complex reinsurance treaty arrangements. Although residual market rates average thirty percent to thirty-five percent higher than the voluntary rates, all rate levels in the residual market are subject to prior approval by state insurance regulators, and rate levels are artificially depressed.

The perception that the insurer's underwriting function will replace regulation and enhance safety is badly misplaced. All owner-operators, whether responsible or irresponsible, will obtain insurance coverage in either the voluntary or involuntary insurance market. The inclusion of specific insurance requirements in federal legislation is inappropriate. If there is a perceived need for increased insurance limits for motor carriers of passengers, the current limits should be reviewed by the appropriate regulatory agencies which are more familiar with the needs of the specific marketplace and its impact on the general public.

EXHIBIT 2.—INTER-CITY BUS RATES—51 to 200 MILES RADIUS

Passengers	Limit of liability					
	25	100/300/50	750	1,500	2,500	5,000
	Premium charge per bus					
Baltimore:						
9,000 to 20,000	$4,510	$6,558	$8,253	$9,516	$10,328	$11,455
21,000 to 60,000	6,540	9,509	11,968	13,799	14,323	16,612
Louisville:						
9,000 to 20,000	2,570	3,652	4,523	5,191	5,628	6,219
21,000 to 60,000	3,727	5,296	6,560	7,529	8,162	9,019
Dayton:						
9,000 to 20,000	2,169	3,117	3,883	4,468	4,859	5,357
21,000 to 20,000	3,145	4,519	5,630	6,479	7,045	7,768

Note.—Fleet rate: 5 or more buses.

STATEMENT OF ROBERT HENRI BINDER, PRESIDENT, TRANSPORTATION ASSOCIATION OF AMERICA

My name is Robert H. Binder, and I am the president of the Transportation Association of America (TAA), which is located at 1100 17th Street NW., Washington, D.C. 20036, (202) 296-2470. TAA is a national transportation policy organization composed of transportation interests of all kinds, including users, suppliers, investors, and carriers of all modes—airlines, motor carriers (bus and truck), freight forwarders, oil pipelines, railroads, and water carriers (inland and ocean). These transport interests work together in TAA's National Cooperative Project to develop policy positions designed to provide the strongest possible U.S. transportation system under private-enterprise principles.

For reasons given in this statement, TAA strongly favors the updating and revising of present economic regulations affecting the nation's intercity[1] bus industry. Our Association not only generally supports H.R. 3663, the Bus Regulatory-Reform Act, as passed by the House of Representatives; but it also specifically supports many of the provisions therein. It does, however, request consideration of two amendments.

This support is based on policies developed by the above member interests through the efforts of eight permanent advisory panels consisting of high-level executives representing users/suppliers, investors, and the six carrier modes listed above. Following clearance of the policy proposals through the Association's Cooperative Project, and the expression of support or non-opposition to them by all eight panels, the proposals were formally adopted by the 100-member TAA Board of Directors. This Board represents a cross-section of top executives in the transportation sectors mentioned above. A current roster of the TAA Board is attached to this statement.

As indicated to the members of this Subcommittee during the last Congress, when it was considering regulatory reforms for the nation's trucking industry (both carriers of general freight and household movers), TAA has recently developed a number of policy positions that call for less economic regulation in the motor carrier field, with far greater reliance on competition. This relatively new policy approach to transportation regulation by TAA is clearly brought out by the following position that has been formally approved by the TAA Board, following panel review and clearance as indicated above:

"*Transportation Rates, Rules and Practices*—TAA favors greater reliance on competition, with carriers given an expanded zone of freedom from ICC regulation in setting their rates and the right to make changes with as little as five days' notice—but with retention of sufficient ICC power to prevent unreasonable or discriminatory rates. Carriers should be allowed to continue to apply general rate increases to cover across-the-board types of costs, under anti-trust immunity, and the ICC should have clear authority to adjust intrastate rates that adversely affect interstate commerce."

While the initial application of the above policy was directed at the recently passed Motor Carrier, Household Goods Transportation, and Staggers Rail Acts of 1980, the principles stated therein can equally be applied, where appropriate, to intercity bus regulatory reform.

TAA has long followed basic economic trends of the various transport modes, and it has published extensive statistical data showing the comparative performances of the different passenger and freight modes in its annual "Transportation Facts & Trends" booklet. Based on information shown in this booklet, TAA is concerned about the inability of the nation's intercity bus industry to keep pace with other passenger modes of transportation. From a traffic standpoint, this industry has been unable to share in the sizeable gains in total intercity passenger travel during the past decade. This is clearly shown by the following analysis of modal changes in intercity passenger-miles during the period 1970–1980:

Total travel increased from 1,180.8 billion to 1,569.5 billion, a gain of 32.9 percent.

Total auto travel increased from 1,026.0 billion to 1,312.1 billion, a gain of 27.9 percent.

Total commercial air travel increased from 109.5 billion to 203.2 billion, a gain of 85.6 percent.

Total general aviation travel increased from 9.1 billion to 15.0 billion, a gain of 64.8 percent.

While total intercity rail travel, exclusive of commutation traffic, decreased from 6.2 billion to 5.9 billion, a drop of 4.8 percent, its Amtrak segment was able to increase traffic volume from 3.0 billion in 1972 (first full year of operations) to 4.5 billion, an increase of 50 percent.

Total commercial bus travel, on the other hand, increased from 25.3 billion to 27.7 billion, a gain of only 9.5 percent.

Even though the intercity bus industry operates over an extensive nationwide network of routes that reach far more points than any other public passenger mode, and offers service at a lower cost, it handled a modest 2.1 percent of the nation's total intercity passenger-miles in 1970, including auto travel, and only 17.4 percent of total passenger-miles handled by commercial carriers by air, rail, and bus combined.

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[1] While the term "intercity" is generally used in describing this industry, TAA's primary interest is in those carriers engaged in interstate commerce and subject to the economic regulation of the Interstate Commerce Commission.

Unfortunately, the intercity bus industry hasn't been able to retain even these relatively small shares of passenger travel, which in 1980 dropped to 1.8 percent of total travel and 11.4 percent of total commercial travel.

While the rising cost of operating an automobile has in recent years discouraged auto driving for intercity travel (e.g., total intercity auto passenger miles declined by 29 billion from 1978 to 1979 and by another 21 billion in 1980) only a very small portion of this lost traffic, about 2 billion, was picked up by the bus industry. The airlines were the major beneficiaries. With the temporary hold on gasoline prices, because of the current surplus of oil supplies and the use of both smaller and more fuel-efficient cars, the volume of intercity auto travel picked up sharply again in 1981 by the same 50 billion lost in 1979-1980—with both commercial air and bus travel declining.

On the financial side, the picture has improved somewhat for intercity bus lines during the past several years, yet continues below pre-1970 levels. To illustrate, in 1970 the entire intercity bus industry, including all classes of carriers, reported to the ICC that its operating ratio (operating expenses divided by operating revenues) was a respectable 90.1 percent. This ratio, unfortunately, increased steadily during the 1970's, reaching a high of 96.1 percent in 1978. While the ratio has improved in both 1979 and 1980, to 94.6 and 93.1 percent respectively, it still has a long way to go to reach the levels of 1967-1969 of 88.8 percent.

A similar trend for net operating revenues before income taxes shows that they declined steadily from 1971 ($101 million) to $52 million in 1976, remaining at $54.7 and $54 million for the next two years respectively. While the industry has reported sizeable gains for each of the next two years, 1979 and 1980, we should recognize that during the past decade, both producer and price levels have more than doubled, so 1980's $134 million in taxable earnings could purchase less than half as much for each dollar invested in new equipment and facilities.

Despite the fact that impartial studies have shown that "the intercity bus is the most energy efficient of the public passenger transportation modes" (e.g., "Transportation Energy Conservation Data Book," Oak Ridge National Laboratory), the inability of the intercity bus industry to attract new traffic has prevented the exploitation of this advantage. Clearly, there is need for some changes to provide a stimulus and enable this industry to play an increasing role in public passenger transport and at the same time help conerve petroleum-based fuels.

The situation is not expected to get any better for the intercity bus industry without some changes. One reason is the phased deregulation of domestic commercial air passenger carriers—with airline fares now virtually regulation free, route authority becoming unregulated in 1983, and virtually all CAB regulation ended by the demise of that agency in 1985 (even earlier if pending legislation is passed). Intercity bus lines are particularly susceptible to competition from the many small, short-route airlines that have entered and are expanding in the commercial travel field.

Another competitor of the intercity bus carrier, Amtrak, is, of course, virtually regulation-free from the standpoint of rates; and it still continues to benefit from hundreds of millions of dollars a year in direct U.S. subsidies. Finally, the complete deregulation of domestic commercial air freight in 1977 put intercity bus lines in the position of facing growing competition in the small-package and express-package fields—areas which many bus lines have found to be more profitable than their regular-route business.

The trends indicated above, in our view, clearly point out the need for sharply reducing the amount of regulation now imposed on our intercity bus industry. H. R. 3663 would in most part accomplish this objective, and, thus, should be passed into law—but, we urge, with a couple of amendments proposed in this statement.

TAA VIEWS ON PROVISIONS IN H.R. 3663

Several bills were introduced in both the House and Senate for the purpose of modernizing the economic regulation of the intercity bus industry. H.R. 3663, as we interpret it, represents a compromise version of the two key bills—one sponsored by the Interstate Commerce Commission, and the other by the American Bus Association.

While TAA does not have policies applicable to all the provisions in this bill, it does have policy positions to permit its expression of general support of most provisions of the bill as now written, and specific support of a number of them.

Purpose of legislation.—TAA agrees with the purpose set forth in H.R. 3663, which is "to reduce unnecessary and burdensome Government regulation".

Congressional findings.—TAA generally agrees with the Congressional Findings in H.R. 3663; and we specifically support the concern expressed therein "that State regulation of the motor bus industry has tended, in certain circumstances, to unreasonably burden interstate commerce".

Congressional oversight.—TAA favors periodic oversight by Congress of the effects of H.R. 3663.

National transportation policy.—TAA generally supports this section, and specifically favors the emphasis given to the goals that the ICC "enable efficient and well-managed carriers to earn adequate profits and attract capital" and that the states not only should be encouraged to cooperate with the ICC but also act to insure that Federal reform initiatives in H.R. 3663 "are not nullified by State regulatory actions".

Motor carrier of passengers entry policy.—The extent to which entry regulations should be eased is one of the most difficult policy issues to decide, as experienced in the Motor Carrier Act of 1980. TAA, for many years, considered the certification process as the "cornerstone of the common carrier system", under which carriers given authority to serve the general public are protected from excessive competition, but who, in turn, must provide adequate service to all users at reasonable rates.

The Congress, in 1977, 1978, and 1980, significantly weakened the common carrier concept for domestic air freight, domestic air passenger travel, and interstate trucking, respectively. Congress, thus, has clearly decided that it wants the nation's commercial transportation industry to become far more competitive and regulated in most part by the marketplace. As indicated earlier in this statement, recently adopted TAA policies put the Association on the side of those favoring such a change.

The changes for entry proposed in H. R. 3663 are very similar to those adopted in the Motor Carrier Act of 1980. The primary standard will be a "fit, willing and able" test, with the ICC empowered to reject an application by parties able to comply with it only on the basis of proof from an objecting party that the proposed service "is not consistent with the public interest." If the experience of the Motor Carrier Act repeats itself, this change, for all practical purposes, means virtually free entry into the intercity bus field.

While TAA has some concern about virtual open entry into the intercity bus field—because it is a public-service field of transportation where the costs of entry and economies of scale are relatively small, yet the responsibilities to the public are large—we would be far more concerned if the right to exit the field was not similarly liberalized.

To help prevent unqualified and irresponsible persons from entering this field, TAA believes the "fit, willing and able" test should be a strict one. Therefore, we strongly support the provision in this section that this test, among other things, includes "financial fitness, operational fitness, and safety fitness".

The most controversial portion of this section of H.R. 3663 deals with pre-emption powers of the ICC over intrastate bus routes that are part of an ICC-regulated carrier's overall route structure. TAA, on numerous occasions in the past, has supported such pre-emption authority for a Federal regulatory agency where it can be proven that the state actions are unduly burdening interstate commerce. We still believe that this principle is sound, and, thus, support the pre-emption provisions in this section. It appears to us as being clearly unreasonable and unfair for a state to prevent an interstate bus line from providing service between points within a state along its interstate routes. While the procedures and conditions in H.R. 3663 for applying this ICC power appear to us as far too complex and time-consuming, we recognize the necessity to satisfy the concerns of state authorities and, therefore, support them.

This section of H.R. 3663 also deals with the highly controversial policy issue relating to granting foreign bus lines—specifically Canadian and Mexican—the right to operate in the United States. We believe strongly that the ICC should not be authorized to issue operating certificates to any Canadian or Mexican motor carrier—whether a bus or trucking company—when it can be shown that U.S. motor carriers are denied similar entry rights by Canada, Mexico, or any of their political subdivisions. As we understand the language of Section 6 as now written, this limitation on ICC's entry power is included; thus, it has TAA's full support.

Discriminatory treatment by foreign nations of U.S. carriers in the international aviation and maritime fields has been a long-standing problem, and similar difficulties have arisen in the motor carrier field. Where U.S. entry standards are more liberal than those imposed by Mexico or Canada, it is apparent that foreign carriers are at an advantage. U.S. carriers not only face the prospect of more competition for lucrative U.S. markets, without reciprocal rights, but also are restricted from competing for traffic flowing between points within the two countries. While TAA would support any reasonable method of putting U.S. and foreign carriers on a comparable basis, Congress obviously cannot change the statutes of these foreign countries. It can, however, tighten entry for these foreign carriers to help bring equity into this area. We understand that proposals are being made to do this, which have TAA's support.

Restrictions in Operating Rights.—The provisions in H.R. 3663 to ease restrictions in motor bus companies' operating rights are very much in line with TAA policy views. We believe that carriers should not be restricted from serving intermediate and off-route points along their authorized routes, or from providing round-trip service where only one-way authority is presently permitted. We believe that the directive to the ICC to establish expedited procedures for this purpose is the proper approach—rather than an outright removal of such restrictions by statute—so that existing carriers will have the opportunity to express their views formally to the Commission before any such actions are taken.

Rule of ratemaking.—TAA was largely instrumental in the development of legislative language in the Rail 4-R Act of 1976 that directs the ICC to develop standards to assure reasonable levels of rail revenues. This language was strengthened in the Staggers Rail Act of 1980, and similar language was included in the Motor Carrier Act of 1980. Therefore, TAA strongly favors the inclusion of this language in any intercity bus regulatory-reform legislation. Unless carriers have the opportunity to generate sufficient cash flow and to attract outside funds to meet their capital needs, the public will not receive the quality and quantity of intercity bus service that will be needed in the future. This section of H.R. 3663 should be retained.

Rate bureaus.—TAA, historically, has supported the collective ratemaking approach through carrier rate bureaus exempt from the general anti-trust statutes—but subject to ICC regulation and supervision in this area. We believed that these bureaus helped provide stability to the ratemaking process, permitted the publishing of rates at minimum cost and maximum public accessibility, and prevented discriminatory carrier practices through collective discussions and actions.

While TAA's interest in rate bureaus has mostly been directed at those handling freight rates, we see similar benefits to the public through the bureau that handles passenger fares for bus lines. However, as it did for freight rate bureaus, TAA supports major procedural reforms for the bus bureau similar to those made by the Motor Carrier Act of 1980. In particular, we favor giving carrier bureau members the clear right of independent rate action, preventing rate bureau employees from docketing or acting on tariff proposals other than supplying background data to bureau members on an objective basis, and limiting voting on docket matters to carrier members with directly affected operating authorities, either directly or through a properly designated representative. We also favor an outright restriction on the right of the bureau to protest any member rates to the ICC; and we favor retaining the right of carriers to make general rate adjustments to cover broad, across-the-board inflationary costs such as for fuel. We understand that all these procedural changes have been carried over from the Motor Carrier Act of 1980 to H.R. 3663; and, therefore, they have TAA's support.

TAA supports the single-line rate provisions of the Motor Carrier Act of 1980, with the understanding that carriers can continue to collectively discuss and vote on rates for single-line service between any two points. However, carriers should not be permitted to discuss and vote on a single-line rate, as defined in the 1980 Act, which is a rate of an individual carrier that applies to service only over its line. We do not object to having the bus rate bureau included under the Rate Bureau Study Commission's mandate in that Act.

Zone of rate freedom.—As indicated in the broad TAA policy statement shown earlier in this statement, TAA supports the authorization of a regulation-free zone of ratemaking for ICC-regulated carriers. We, therefore, support Section 11 of H.R. 3663. While the use of such a zone appears to be desirable in theory, the carriers' likely methodology for competing on an individual carrier basis will be through the use of the right of independent action within the rate bureau structure. While this has been the case to date for the trucking industry, possibly it will not be as extensive for the bus lines.

Exit policy.—The changes in exit policy proposed in Section 16 of H.R. 3663 are very much in line with long-term TAA policy. We believe that, for intrastate portions of an interstate carrier's routes, the applicable state regulatory authorities should have initial jurisdiction to consider a petition for exit. If such authorities reject, or unduly delay action on, the petition, the interstate carrier should be permitted to seek relief from the ICC.

While the procedures in this Section appear far too cumbersome, they would accomplish the above TAA policy objective; and, as such, they are supported by TAA. In principle, as noted earlier in this statement, carrier entry and exit policies should be approximately in balance. If entry is eased significantly, but exit continues to be difficult, as in the past, the situation will become far worse for existing carriers. Unfortunately, H.R. 3663 proposes more liberal entry than exit; although it does offer carriers an opportunity to ease the exit burdens and expedite relief through ICC appellate action.

Discriminatory State regulations of rates and practices.—For the same reasons given for changes in exit provisions in H.R. 3663, TAA favors giving the ICC the right to overrule adverse decisions, or assume jurisdiction when state regulatory agencies fail to act, on interstate carriers' petitions to adjust intrastate rates in line with ICC-approved changes in interstate rates. The ICC action, as stated in the bill, must be based on a finding that the intrastate rates, without the requested adjustment, would impose an undue burden on the interstate carriers, or that they would be unreasonably discriminatory.

Again, while the procedures set forth in Section 17 appear far too complex and time-consuming, we understand the concerns of state regulatory authorities. Therefore, we support them as being in line with the above-stated TAA policy objective.

Tax discrimination.—Since the proposed change in Section 20 to prevent state and local governments from assessing or taxing transportation property of ICC-regulated bus lines on a discriminatory bases, as compared to other business property, is a carry-through of similar TAA-developed legislative language included in the Rail 4-R Act of 1976 and the Motor Carrier Act of 1980, TAA strongly supports its retention.

Transportation carriers should pay their fair share of property taxes, along with other businesses, but not be discriminated against because they may not have a standing place of business in the taxing area and thus are not in as favorable a position to oppose attempts to tax unfairly transport equipment merely operating through the area.

Merger procedure.—The Staggers Act of 1980 simplified and reduced the merger procedures to be followed not only for smaller (Class II and III) railroads, but also for motor carriers subject to ICC regulatory jurisdiction. To the best of our knowledge, no criticism has been expressed of this change by TAA transport interests, and it is in line with long-standing TAA policy to expedite and simplify carrier merger procedures.

TAA, therefore, urges that the Staggers Act changes be retained and the proposed reinstatement, in Section 21 of H.R. 3663, of the extensive and cumbersome criteria for motor carrier merger procedures long used by the ICC not be adopted by your Subcommittee. To be consistent with the statement set forth in the "Purpose of the Act" that it is "part of the continuing effort by Congress to reduce unnecessary and burdensome Government regulation", Section 21 should be deleted.

Employee protection.—Since the employee protections in Section 27 appear to be similar to those in the Air Regulatory Reform Act of 1978, we are hopeful that they do not create the same problems for the carriers. These protections would make ICC the administrator of a nationwide "hiring pool" of priority-employment workers that are terminated because of H.R. 3663. This would sharply interfere with normal employment practices of carriers and make it more difficult to hire persons they believe to be better suited for their own operations. Nevertheless, if ICC-regulated bus lines are willing, or feel obligated to accept, this restriction and burden, our views should be taken simply as a warning of things most likely to come. As in the past Conrail-creation and in the current CAB-sunset legislation, the potential burden of labor protections may prove too heavy for the carriers to assume.

CONCLUSION

We appreciate the opportunity given TAA to express its views on this important bill, and we urge the Subcommittee's consideration of the amendments requested relating to ICC's granting of operating rights to foreign carriers, and the retention of simplified motor carrier merger procedures.

We shall be happy to discuss at length any views expressed in this statement with either members of the Subcommittee or of its staff.

STATEMENT OF STANLEY FOY ON BEHALF OF THE ALABAMA PUBLIC SERVICE COMMISSION

Mister Chairman and members of the subcommittee, my name is Stanley Foy and I am representing the Alabama Public Service Commission, or the APSC. The opportunity to present the views of the Alabama Commission on the proposed Bus Regulatory Reform Act of 1981 is appreciated.

The APSC is composed of its President, Billy Joe Camp, and its Associate Commissioners, Jim Folsom, Jr. and Lynn Greer. This Commission regulates the operations, service and rates of intercity bus lines that operate in Alabama.

Any scheme of regulation of the intercity bus industry, or change in the scheme of regulation, must recognize the fact that intercity bus lines are public transportation utilities. They provide scheduled service over a network of routes that provides, for many individuals, the essential access to non-emergency medical care, government offices, and retail outlets. Scheduled service also provides a back-up mode of transportation to individuals whose private automobiles are not able to begin or continue to provide service.

Of course, this service is also available for leisure and recreational travel. Nevertheless, the public utility aspect of this service requires meaningful government oversight of the bus lines to protect the public interest. The essential transportation service is predominantly to and from the major cities in the same state and, consequently, regulation of intrastate service primarily by the state commissions is necessary and logical. On the other hand, federal preemption would make interstate commerce the primary consideration in spite of adverse effects on the essential, intrastate service.

The bill under consideration would, if enacted, end meaningful government oversight of the essential, intrastate service, and leave such service primarily to the discretion of the bus lines. Of course, the private, corporate interests of the bus lines do not always coincide with the interests of those that depend upon the essential transportation for access to basic services. Nevertheless, the bill under consideration would provide for federal preemption of the states in the areas of termination of service, schedule changes, rates, and operating authority. It also would require unrealistic time limits for actions by the state agencies and for review by the federal agency.

TERMINATION OF SERVICE

Section 16 of the bill proposes a new section 10935 of Title 49 of the United States Code. This provision would give the Interstate Commerce Commission the power to order termination or cancellation of intrastate service authorized by state commissions. Termination of interstate service is also mentioned in subsection (e)(2). There are, however, no firm guidelines or standards governing when termination of service should be permitted or disallowed. Consequently, this provision is not consistent with the findings in Section 3, which states: ". . . the Interstate Commerce Commission should be given explicit direction for regulation of the motor bus industry and well-defined limits within which it may act pursuant to congressional policy;"

In addition, the provisions of Section 16 are not consistent with Section 5. Under proposed 49 U.S.C. 10101(a)(2)(E), there would be a national transportation policy to "provide and maintain service to small communities and small shippers." Section 16 would be a step in the opposite direction by apparently permitting free exit from interstate service and providing a second chance to terminate intrastate service.

Section 16 may actually guarantee the ability of the bus lines to terminate any service they desire. If they are free to terminate interstate service, they will simply do so even if they lose Section 16 proceedings. They would then merely reapply to terminate intrastate service, and contend that the resulting losses caused by intrastate only service constitute an unreasonable burden on interstate service. Such a sequence of events is not unlikely, as shown by the experience with Trailways Tennessee Lines' Birmingham—Chattanooga Service.

Attached hereto as Appendix "A" is the APSC's order in that proceeding, and Appendix "B" is the Examiner's Report in that proceeding. These documents show that Trailways had been generating sufficient revenue to pay the costs of these schedules. It then terminated service at the state line, and later terminated any interstate service on these schedules. These actions were taken in the face of changed circumstances which Trailways refused to consider. Nevetheless, Trailways complained to the United States House of Representatives about the APSC's denial of its petition. (See H.R. 3663 House Report, pages 53–54)

It is relatively certain that many towns in Alabama would lose service if the bus lines are granted freedom of exist. The bus lines do not contend otherwise, and the Florida experience confirms it. In Florida, there were "dislocations" and "route rationalizations" that resulted in a loss of service for many North Central Florida towns. North Central Florida is similar to many parts of Alabama, and similar results could be anticipated.

Consequently, the APSC urges this subcommittee to delete Section 16 of this bill, and to substitute a provision to give the Interstate Commerce Commission explicit directions on discontinuance or termination of interstate service. The substitute should provide that the ICC shall not permit or authorize the discontinuance of interstate service unless the bus line establishes that the service has not and cannot generate sufficient revenue to cover direct or variable expenses.

SCHEDULE CHANGES

Section 17(A)(1) of the bill under consideration proposed a new 49 U.S.C. 11501(E). Under subsection (E)(2)(C) and related parts of this subsection, the bus lines are given the absolute discretion of how to set their schedules. This results from a lack of standards for setting interstate schedules, and the absolute right to alter the intrastate schedules to those selected for interstate service. The times needed for essential service will never be considered! Connections with other schedules can be broken, and there is no government oversight to prevent it when the public interest would suffer.

Clearly subsection (E)(2)(C) and related provisions should be deleted. In its place, a provision should be inserted which will require the ICC to consider essential, intrastate service requirements and deny proposed interstate schedule changes that are inconsistent with those requirements.

RATES

Section 17(A)(1) of the bill under consideration, through a new, proposed 49 U.S.C. 11501(E), would provide for federal preemption of state rate decisions. Subsection (E)(2)(A)(I) specifically gives the bus lines the right to raise intrastate rates to the level of comparable interstate rates. In addition, Section 11 of this bill permits rate increases, whether justified by cost increases or not; and it permits selective rate reductions.

Initially, there is simply no need for federal agency review of state rate decisions. Rate decisions of state commissions are already reviewable in the state courts; and state laws and state and federal constitutions prevent confiscatory intrastate rate prescriptions.

Next, permitting intrastate rates to match interstate rate levels is illogical and unreasonable. The interstate rates are based on national average costs. The rural poor in Alabama should not be saddled with fares based on wage levels, terminal costs, and other operating expenses from New York City and Chicago.

Finally, the rate freedom proposal is similar to that permitted the airlines. Such rate freedom services the public in most areas very poorly. As "Time" magazine noted on February 22, 1982 (page 46): "The result is a hodgepodge of pricing that makes little economic or business sense." (A copy of this article is attached as Appendix "C".) Certainly, such pricing should not be permitted for essential service.

Consequently, the APSC urges this subcommittee to delete Section 17 of this bill.

OPERATING AUTHORITY

Section 6(B)(2) and Section 6(B)(1) through a new 49 U.S.C. 10922(c)(2) would, if enacted, permit the Interstate Commerce Commission to grant intrastate operating authority. The intrastate operations would be authorized without consideration of the decisions of the state commissions and without consideration of the evidence presented to the state commission. Such summary, de novo review is patently unreasonable and unnecessary. It would also raise serious questions of an unconstitutional preemption of the states' right to govern intrastate commerce over their highways.

Consequently, the APSC strongly urges this subcommittee to delete these state preemption provisions.

TIME LIMITS

As shown hereinabove, the state preemption provisions of this bill should be rejected on their merits. They should also be deleted because of the procedural problems of arbitrary and unreasonable time limits. Rational administrative decisionmaking requires time for notice, information gathering and study of the information gathered. The time limits in this bill would not provide that time, and would require cursory review and summary decisions.

The most blatant provision concerns schedule changes in Section 17. 60 days are provided, from the filing date, for decisions on schedule changes. Such proceedings call for notice to the affected users and the opportunity to object to or protest the change. If a protest is lodged, the bus line and the affected users must be given an opportunity to present their views. Next, the parties must be given the opportunity to respond to the allegations of the other parties. Otherwise, half-truths and misleading information would never be challenged. At this point, the 60 days would have elapsed, and a decision must be summarily rendered. There is simply no time provided for cross-examination of adverse witnesses, which can often alter the impact of their presentations. Also, there is simply no time to prepare and circulate a recommended decision, which can permit the parties to point out erroneous findings and conclusions.

If the 60 days for state commission decisions was not bad enough, Section 17 then provides only 30 days for a decision by the Interstate Commerce Commission. In this 30 days, the filing must be processed internally at the ICC and must travel through the mail to those entitled to notice. Parties wishing to object must immediately prepare their comments for the return mail. Finally, the ICC must summarily render a decision.

Obviously, the ICC will be reduced to rubber stamp decision-making. A form order or an order with canned wording from an automatic typewriter may be served, but the effect will be the same. Someone will have to glance at the filing and, in effect, stamp "granted" or "denied".

The time limits for termination of service and rate changes are likewise inadequate and unreasonable. Section 16 of the bill provides for 120 days from filing to final decision by the state commission in termination of service cases, and 90 days for the Federal Commission. Section 17 provides for 120 days for state rate decisions, and a mere 60 days for Federal decisions on intrastate rates.

Section 6 of this bill provides only 120 days for state decisions and 90 days for Federal Decisions on intrastate operating authority. These time limits are simply incredible! Under 49 U.S.C. 10322(b), up to 270 days are allowed for interstate operating authority cases. Route extensions by bus lines are often among the most complex and time consuming transportation cases. In addition, it is often desirable for the interstate and intrastate cases to be heard on a joint record, but the drastic and unreasonable time limitation of Section 6 would force the state commissions to abandon any thought of joint hearings.

CONCLUSION

I trust the memers will agree that these suggested changes in H.R. 3663 will better serve your constitutents and the public, and that these changes will be adopted. As shown by the "Time" magazine article attached as Appendix "C", the cumulative effects of this bill in its present form would be instability and undependability of essential, intrastate transportation service.

Appendix A

STATE OF ALABAMA PUBLIC SERVICE COMMISSION

[Docket 18037]

TRAILWAYS TENNESSEE LINES, INC., APPLICANT

REPORT AND ORDER OF THE COMMISSION

By application filed November 13, 1980, Trailways Tennessee Lines, Inc., seeks to discontinue Schedule Runs 8515 and 8510 between Ider Junction and Birmingham, effective November 24, 1980. Pursuant to orders dated October 19, 1980 and February 2, 1981, this filing was suspended through June 5, 1981. The order of November 19, 1980, set this matter for hearing on December 15, 1980. The petition of T. Euclid Rains, Sr. to intervene was granted.

This matter was the subject of an Examiner's Report and Recommended Order, which was served on March 24, 1981. The Examiner found that the company has the ability to operate these runs in a manner where they would generate enough revenue to cover their direct costs, and that, consequently, the public convenience and necessity does not permit their discontinuance. He then recommended that the application be denied.

On April 14, 1981, the applicant filed exceptions to the Examiner's Report and Recommended Order. The applicant contends that the evidence shows that the application should be granted, and that the Examiner erroneously concluded that the application should be denied. The applicant also requested oral argument.

On April 20, 1981, the intervenor Representative Euclid Rains filed his response to the exceptions. Representative Rains contends that the company is solvent and should not be allowed to have the cream of rich, profitable routes, but abandon service to thousands of people in DeKalb, Marshall and Blount Counties.

We have carefully considered the entire record in this matter, including the testimony and exhibits, the Examiner's Report and Recommended Order, the Exceptions, and the Replies. We find therefrom that the Examiner accurately recorded the evidence in his report and reached the proper conclusions and recommendations. We adopt the Examiner's Report and Recommended Order as fully as if set out herein at length. We specifically find that the company has the ability to operate these runs in a manner that will generate sufficient revenue to cover the cost and to permit service to be continued, and that, consequently, the public convenience and necessity does not permit the discontinuance of these runs.

The request for oral argument is due to be denied herein. We do not think oral argument is necessary to clarify the issues herein, and it would unnecessarily delay a decision.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the request for oral argument be, and the same is, hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION, That the application of Trailways Tennessee Lines, Inc. to discontinue Schedule Runs 8515 and 8510 be, and the same is, hereby, denied.

IT IS FURTHER ORDERED, That this order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 18th day of May, 1981.

ALABAMA PUBLIC SERVICE COMMISSION,
BILLY JOE CAMP, *President.*
JIM FOLSOM, Jr., *Commissioner.*

Appendix B

STATE OF ALABAMA PUBLIC SERVICE COMMISSION

Exceptions, if any, must be filed with the Secretary, Alabama Public Service Commission, P.O. Box 991, Montgomery, Alabama 36130, and served on all other parties of interest within 20 days from the date of service shown above, or within such further period as may be authorized for the filing of exceptions. Replies to exceptions may be filed within 10 days from the date of service of the exceptions. At the expiration of the period for filing of exceptions, the within Report and Recommended Order will become the Report and Order of the Commission unless exceptions are filed seasonably or the time for filing exceptions is extended by the Commission or the Commission within such period stays or postpones the order.

[Docket 18037]

TRAILWAYS TENNESSEE LINES, INC., APPLICANT

EXAMINER'S REPORT AND RECOMMENDED ORDER

By application filed November 13, 1980, Trailways Tennessee Lines, Inc., seeks to discontinue Schedule Runs 8515 and 8510 between Ider Junction and Birmingham, effective November 24, 1980. Pursuant to orders dated October 19, 1980 and February 2, 1981, this filing was suspended through June 5, 1981. The order of November 19, 1980, set this matter for hearing on December 15, 1980. The petition of T. Euclid Rains, Sr. to intervene was granted.

This is the second application to discontinue these schedules, and the third hearing on this matter. The first application was filed on September 1, 1978, and was given Docket 17632. At that time the schedule operated between Chattanooga, Tennessee and Birmingham. For the first ten months of 1978, these runs generated 80 cents per mile in revenue and the company's fully allocated cost was $1.36 per mile. The company did not provide its direct costs of operating these runs, and by order dated March 16, 1979, it was ordered to file the itemized direct costs of these runs and the revenue generated for the first three quarters of 1979.

On January 14, 1980, the company filed data showing that it generated 79 cents per mile in revenue, had direct costs of 83.16 cents per mile, and had fully allocated costs of $1.54 per mile. However, other service by another member of the National Trailways Bus System was instituted between Birmingham and Montgomery on August 1, 1980, and these runs had lacked reasonable in-line connections at Birmingham in the past; agency stations at Fyfe & Henager had been closed; and these schedules had not been continuously published in the standard guide used by the industry. Consequently, the proposed discontinuances were denied and the company was authorized to change the times to coordinate with the new Birmingham-Montgomery service.

In the instant case, Mr. John F. Spellings appeared for the company. Mr. Spellings is the Regional Director of Trailways Tennessee Lines and of Trailways Southern Lines, and is on the payroll of the latter company. Both companies are subsidiaries of Trailways, Inc.

Run No. 8510 departs Birmingham at 11:30 a.m. and goes over Alabama Highway 75 through Oneonta, Albertville and other points to Ider Junction. The bus then turns around, and Run No. 8515 returns over this route, arriving at Birmingham at 5:25 p.m. These runs operate on the five weekdays, except holidays. Mr. Spellings testified that the runs were terminated at the Alabama line, and no longer go to Chattanooga, after the Commission denied the last application to discontinue the runs; and that this reduced the cost by about $60.00 per day.

If these runs are discontinued, the only two towns with agency stations would still be served. Oneonta is served by runs that operate between Birmingham and Huntsville and Albertville is served by runs that operate between Huntsville and Gadsden. Greyhound operates over the parallel route of U.S. 11, with the widest deviation being at Albertville.

Mr. Spellings introduced passenger counts on these runs for two weeks in September and three weeks in November, 1980. On the September study, a total of 20 passengers boarded at Birmingham, 16 passengers got off at Albertville, and 4 passengers got off at Rainesville. In the reverse direction, two passengers boarded at Rainesville, 24 boarded at Albertville, 2 boarded at Oneonta, and 28 arrived in Birmingham. Comparing these figures to the study introduced in Docket 17632, in two weeks in September 1978, 9 passengers got off in Albertville and no passengers got off in Rainesville on Run 8510; and no passenger boarded at Rainesville, 12 passengers boarded at Albertville and 1 passenger boarded at Oneonta. At that time, the runs served Chattanooga, and 39 passengers boarded at Birmingham and 34 passengers arrived in Birmingham. These figures indicate that ridership between Birmingham and Albertville and Rainesville increased over this two-year period. In the three weeks in November, 24 passengers boarded at Birmingham, 16 got off at Albertville and 1 got off in Rainesville. In the reverse direction, 3 passengers boarded at Rainesville, 21 passengers boarded at Albertville, 9 passengers boarded at Oneonta and 32 arrived in Birmingham. On some days the bus operated from Birmingham to Ider Junction with no passengers.

In September 1978, the company also proposed to discontinue one of two Sunday runs between Montgomery and Gadsden, but withdrew the application because of opposition from the School for the Blind in Talladega. That run is still not productive.

In October 1980, Runs Nos. 8510 and 8515 generated 5 cents per mile in passenger revenue. The fully allocated cost was $1.62 per mile. Mr. Spellings did not provide the express revenue, but testified that it was very small. Also, all package express will continue to be handled over other routes. The cost per mile just for the driver is 36 cents. Mr. Spellings calculates a daily loss on these runs, based on 234 miles, of $367.38.

Mr. Spellings testified that no through bus service is operated over this route for two reasons. First, Chattanooga and Birmingham have no community of interest that would help generate traffic. Second, the route is not on a main north-south corridor. The two closest corridors are Montgomery-Birmingham-Nashville-Louisville-Detroit and Miami-Atlanta-Chattanooga-Knoxville-Cincinnati-Chicago. Consequently, there would not be a substantial amount of overhead traffic moving over the Birmingham-Chattanooga route.

On cross-examination, Mr. Spellings testified that at present a package would leave Birmingham at 11:30 a.m., arrive in Albertville at 1:15 p.m. and arrive at Guntersville at 5 p.m. If the instant application is granted, that package would leave Birmingham at 12:15 p.m., arrive in Guntersville at 6:55 p.m. or arrive in Albertville at 7:10 p.m. Therefore, such shipments would arrive after business hours.

Mr. Spellings does not believe these runs could be operated any longer. These runs could contribute to the bankruptcy of the company, and the company could go broke even if these runs are discontinued. Starting in 1977 or 1978 the company began closing agencies that did not cover the company's cost of about $150.00 per month. The agency at Fyfe was one of those.

The company had filed on October 20, 1980, to discontinue Tuesday and Thursday service on these runs, and published schedules, effective October 30, 1980, showing that the Tuesday and Thursday service had been discontinued. When that filing was suspended, the company withdrew it and filed the instant application. The schedules were then published to show no service on these runs. This is done to void the possibility of not operating published schedules, and stranding passengers. Nevertheless, the company's November 1980 Table 7995 shows service on these runs on Monday, Wednesday and Friday, except holidays.

These runs are set up so that the driver can make the round trip in one shift. Under the union contract, the Birmingham local supplies drivers for these runs. The company has not tried to change this contract and originate the runs at Chattanooga because it does not see how it would gain from doing so.

The company has a policy of scheduling runs to make connections with other runs. However, the company did not make such changes in these runs, after receiving specific authority to do so, because the company's program is to discontinue these runs. Mr. Spellings testified that he does not see any way for these runs to pay for themselves.

On redirect, Mr. Spellings testified that service between Albertville and Birmingham is available through connections with Greyhound at Gadsden. This would not help people at Geraldine, Fyfe or Rainesville. Mr. Spellings does not know what the distance is between the Trailways and Greyhound stations in Gadsden.

Mr. T. Euclid Rains lives in Geraldine and has used the service on these runs since 1930. He feels that the company should not be able to discontinue these runs because it can subsidize them with other runs.

In 1979, the company failed by $6,000 to cover its direct costs. Mr. Rains arranged with the County Commissions to cover that loss, but the company didn't want it.

Mr. Spellings testified that the company's year-to-date operating ratio through October 1980, was 101, indicating an operating loss. However, it is noticed that the company's quarterly reports contradict that testimony. Its third quarter year-to-date net operating revenue was $558,412, with an operating ratio of 94.7. Its fourth quarter year-to-date net operating revenue was $705,056, with an operating ratio of 95.

DISCUSSION AND CONCLUSIONS

Under Section 37-3-12(e) of the Code, a common carrier can discontinue service only if the public convenience and necessity permits it. A bus line can discontinue its last runs on a particular route only if those runs cannot generate enough revenue to cover the direct cost of those runs. *Trailways Tennessee Lines, Inc.*, Docket 17632. The company has shown that these runs fell far short of covering their direct costs in 1980. Nevertheless, this application to discontinue these runs should be denied.

In 1978, when the company first sought to discontinue the Birmingham-Chattanooga runs, the revenue covered the direct costs. It appears that ridership has been increasing since then. In 1978, the runs had connections at Chattanooga, but did not have reasonable in-line connections at Birmingham, with a five-hour and a 25-minute lay over in Birmingham on the north bound connection. In 1980, other Trailways service was commenced between Birmingham and Montgomery. It thus appears that these runs could now be operated with reasonable connections at Chattanooga and at Birmingham.

The company's Table 7994 shows that its run 119 arrives in Chattanooga at 11:15 a.m. The record in Docket 17632 shows that an 11:25 a.m. departure would arrive in Birmingham at 2:10 p.m. Capital Trailways Table 8099 shows that its Run No. 93 departs Birmingham at 2:20 p.m. for Clanton, Montgomery and other points. Also, the company's Table 8177 shows that its Run No. 533 departs Birmingham for Tuscaloosa and other points at 6:45 p.m., or after a lay over of 4 hours and 35 minutes. In the reverse direction, the company's Run No. 522 arrives in Birmingham at 3:05 p.m. and Capital's Run No. 94 arrives in Birmingham at 3 p.m. Docket 17632 shows that a 3:25 p.m. departure would arrive in Chattanooga at 8:10 p.m. In addition, the company's Run No. 116 departs Chattanooga at 8:45 p.m. In addition, the company's Table 7999 (Ex. 2) shows that such schedules would provide access to the mid-afternoon series of arrivals and departures at Birmingham for people in Oneonta, and that access is not provided now.

It appears that such a schedule would have reasonable prospects of covering the direct expenses. As stated earlier, these runs have operated in the past without reasonable in line connections at Birmingham and still so operate. With connections on both ends and with the increase in ridership, the runs can be expected to generate enough revenue from passengers and from express that would logically move over these runs to cover direct expenses and to make a significant contribution to overhead expenses.

The examiner is aware that this Commission does not have the power to order the company to resume service to Chattanooga. Nevertheless, nothing requires the Examiner or the Commission to ignore the ability of the company to operate these runs in a manner that will permit service to be continued.

RECOMMENDATION

It is, therefore, the respectful recommendation of the Examiner that the application of Trailways Tennessee Lines, Inc., to discontinue Schedule Runs 8515 and 8510 be denied.

Respectfully submitted,

STANLEY W. FOY,
Hearing Examiner.

Appendix C

[From Time, Feb. 22, 1982]

THE WORST YEAR FOR U.S. AIRLINES

"Like lemmings throwing themselves off a cliff"

(By John S. DeMott. Reported by Christopher Ogden/Chicago and Bruce van Voorst/New York)

Sir Freddie Laker, the British businessman whose Laker Airways went bankrupt two weeks ago as a victim of the cut-rate fares it once pioneered is not alone. U.S. airlines also have big problems stemming in part from a suicidal fare war that has been raging for months.

At a time when winter vacationers should be heading for sunny shores or ski slopes, boosting the fortunes of airlines, the carriers are reporting staggering losses for 1981 and predicting worse misery for 1982. Airline executives and industry experts would not be surprised to see one or more major carriers declare bankruptcy this year. They could, says Analyst Julius Maldutis of Salomon Bros., "repeat the Laker experience."

In trouble also are smaller, fare-cutting lines that either sprang up or grew rapidly after Congress passed the Airline Deregulation Act of 1978 to improve competition. New York Air lost $11.6 million last year. Passenger traffic was so slow at La Guardia Airport that "you could roll a bowling ball through the terminal without hitting anybody," said one airline official. Air New England shut down in October, throwing 400 people out of work. Daniel May, president of Minneapolis-based Republic Airlines, whose pilots and flight attendants have been asked to defer part of their pay to cut costs, cited some of the industry's troubles. "Low fares. The PATCO strike. The recession. High interest rates. They're just killing us."

Operating losses for the nation's twelve major carriers may have reached $500 million last year, a record flow of red ink coming after losses of nearly $280 million in 1980. Revenue gains during 1981 were not enough to offset rising costs from increased fuel prices, wages, landing fees, and lost income from the air-traffic controllers' strike and reduced passenger traffic because of the recession.

The biggest problem has been wildly slashed airfares on the most popular runs. The result is a hodgepodge of pricing that makes little economic or business sense. As of last week, it cost only $77 to fly from New York City to southern Florida on some flights but $168 to go to Myrtle Beach, S.C., about 500 miles closer. The bargain fare to Los Angeles was $149, but it cost $169 to fly a little more than a third as far, to St. Louis.

The price war bewilders even Eli Timoner, chairman of Air Florida, which helped touch off the round of cuts that every other airline feels obliged to match. Things are out of hand, says Timoner, and the time has come to raise fares. Earnings for Air Florida's fourth quarter are expected to be down sharply. "It's like lemmings throwing themselves off a cliff." says he. "There's not logic to it at this point. It's unbusinesslike."

Long-troubled Pan American World Airways last year was the industry's leader in losses. During 1981, it flew about $360 million in the red. To raise money, Pan Am two years ago sold its headquarters building in New York City and made $294 million. Last year it sold its profitable chain of Intercontinental Hotels for $500 million. To sharpen a sagging management, Pan Am's board of directors encouraged William Seawell to retire last year and named C. Edward Acker, then the boss of Air Florida, as new chairman.

Acker still hopes to pull Pan Am out of its tailspin. The airline may begin subleasing its office space in the Pan Am Building and is considering moving its headquarters to Miami or some other city, where costs are lower. It may also chop more employees from its payroll; it has already let go 4,000, leaving 30,000, and cut salaries 10 percent across the board. Finally, Pan Am is trying to sell two of its Boeing 747 jumbo jets, although finding buyers is tough. Insists Acker: "We have over $200 million in cash. We are a long, long way from a cash crisis." What Pan Am and the industry need, he says, "is a good 15 percent fare increase. With that we'd be healthy."

Continental Air Lines, which has furloughed 1,500 people, sustained a $60.4 million loss last year. United ran up a loss of $123.3 million in the fourth quarter, a startling reversal of the $40.6 million profit it earned during the same period in 1980. Even Delta, long the profit-making model for the industry, was hurting. Its fourth-quarter earnings were off 81 percent.

Not all airlines are in trouble. Piedmont, which flies mainly in the mid-Atlantic states, doubled its earnings to $32 million in 1981. The income of Denver-based Frontier Airlines was up 38 percent last year, to $31.9 million. Ozark earned $17 million in 1981, its first profit in three years.

Airline creditors hope that recovery, comes before they must declare their borrowers in default. Some are easing repayment terms. Braniff's bankers, for example, rescheduled $161 million of debt that was due Feb. 1.

The troubles in the skies are hitting aircraft manufacturers almost as hard as the airlines. Boeing, the largest maker of civilian planes, saw its earnings plunge 42 percent, to $96 million, in the fourth quarter. The company plans to cut its Seattle workforce by 5,000 people. Reduced demand for airplanes also forced McDonnell Douglas last week to cancel a deal with Fokker BV of The Netherlands to build a 150-passenger jet. The St. Louis company expects to absorb a $50 million loss on DC-10 orders that Laker Airways had placed but cannot pay for.

Meanwhile in London, Sir Freddie was down last week but certainly not yet out. A loyal British public had rallied behind him and donated some £3 million ($5.5 million) to a Freddie Friendly Fund to help him launch another carrier. Laker and Roland ("Tiny") Rowland, managing director of Lonrho Ltd. and one of Britain's most talked-about businessmen, were considering joining forces in a new flying venture that could be airborne by April.

SUPPLEMENTAL STATEMENT OF WILLIAM L. MCCRACKEN, SENIOR VICE PRESIDENT AND ASSISTANT TO THE CHAIRMAN OF THE BOARD, GREYHOUND LINES, INC.

Mr. Chairman and members of the subcommittee, I am William L. McCracken, senior vice president and assistant to the chairman of the board of Greyhound Lines, Inc. I was afforded the opportunity on March 8, 1982, to appear and testify before this subcommittee in support of H.R. 3663, The Bus Regulatory Reform Act of 1981. As a result of written statements which were presented to the subcommittee on that day and oral comments from several of the witnesses, I feel that it is necessary to supplement my earlier statement and therefore I request that this supplemental statement be made a part of the subcommittee's official record. There are four major points which I would like to address.

First, I wish to more specifically respond to concerns regarding continuation of bus service to small communities and to discuss the procedural safeguards contained in H.R. 3663.

Second, I wish to reaffirm my statements to this subcommittee regarding the inability of the Missouri Public Service Commission to process passenger carrier rate increases in a timely manner.

Third, the imtemperate and unwarranted statements of Mr. Theodore Knappen, senior vice president of Trailways, attacking Greyhound Lines, Inc., are misleading and inaccurate and not at all germane to the merits of H.R. 3663.

Fourth, the entire thrust of H.R. 3663 is to reduce regulation and lessen government intrusion into the day-to-day prerogatives of bus company management. However, in at least three respects, namely: (1) section 25, citizen band radios; (2) section 26, bus terminal study; and (3) section 27, employee protection; more government intrusion is evident, where none is needed and, accordingly, these three sections should be eliminated from H.R. 3663.

I. H.R. 3663 SAFEGUARDS SERVICE TO SMALL COMMUNITIES BY PERMITTING PRIOR STATE ACTION

Section 16 of H.R. 3663, while imposing procedural steps which are somewhat burdensome to bus companies, strikes a balance between state and federal regulations permitting bus companies to reduce service in a two-step procedure where the state instrumentality and the I.C.C. Both have an opportunity to pass upon a proposed schedule reduction, In order to take advantage of the exit provisions of section 16, the bus company must propose a service discontinuance or reduction for which it also has interstate authority. The bus company must request the State instrumentality's permission to discontinue or reduce such service. The State has the primary responsibility to scrutinize and review the carrier's proposed schedule reduction.

After the state instrumentality has had an opportunity to review the underlying facts and pass upon the propriety of the schedule reduction, the carrier, if aggrieved, may file an "appeal" to the I.C.C. initiating the second step of the two-step process. As a part of that process, the carrier must notify the Governor of the state, the State instrumentality, local governments and other interested persons concerning the proposed schedule reduction. All such interested persons may participate at the I.C.C. proceeding and object to the discontinuance.

At the I.C.C. level the grant of the discontinuance is not automatic. The I.C.C. must take deliberate action and: "Shall grant such permission unless the commission finds, on the basis of the evidence presented by the person objecting to the granting of such permission, that such discontinuance or reduction is not consistent with the public interest or that continuing the transportation, without the proposed discontinuance or reduction will not constitute an unreasonable burden on interstate commerce." Section 16E1.

While the exit provisions could be substantially streamlined, it is evident that the two-step process of State and Federal review more than adequately safeguards bus service to small communities.

In short, Greyhound believes the exit provisions of H.R. 3663 strike a balance in that they afford the traveling public regulatory protections which are more than adequate, but at the same time safeguard bus companies from arbitrary and discriminatory State actions.

II. REAFFIRMATION OF REGUALTORY LAG BEFORE THE MISSIOURI PUBLIC SERVICE COMMISSION

I wish to reaffirm my earlier statements before this subcommitee concerning state regulatory lag and in particular regulatory lag by the Missouri P.S.C. in processing rate applications.

Greyhound Lines' Missouri intrastate passenger fares are unduly depresssed and are only 50 Percent of the comparable intrastate fares. Greyhound Lines' 1981 Missiouri operating ratio before tax was 112.6 percent and 108.9 percent after tax. The term "operating ration" before tax referes to a carrier's expenses as compared to revenues. This means for every $1 or revenue which Greyhound generated in Missiouri, it spent $1.12.

The time frames involved in processing Missiouri rate applications have increased over the last several years from 162 days in 1977 to 169 days in 1978 to 215 days in 1980. The current rate proceeding, initiated in October 1981 will be under consideration for 235 days before even the first hearing is scheduled in June 1982. Greyhound Lines must thereafter await an examiner's recommendation, followed by a full review by the Missouri P.S.C. From the time of filing until the initial determination, approximately a year will have passed.

The specific time parameters involved in the current rate proceeding are as follows: On October 28, 1981, Greyhound Lines filed to increase its intrastate express rates and charter coach charges. On October 29, 1981, we filed to increase passenger fares.

On November 2, 1981, the Missiouri P.S.C. suspended the requested rate increase until March 31, 1982. Thereafter, by order dated February 2, 1982, the Missouri P.S.C. issued a second suspension indicating that: "The commission is of the opinion that an investigation of the proposed charges cannot be completed by March 31, 1982, and concludes that these revised tariffs should be further suspended for a period of six (6) months beyond March 31, 1982 until September 30, 1982, unless otherwise ordered by the Commission." (p.1)

An oral hearing is now scheduled on June 21,1982. This protracted hearing process is taking place notwithstanding the Missouri P.S.C.'s recognition of its statutory mandate, which it recites in its Febuary 2, 1982, supension order: "Inasmuch as the Commission is required by law to give the hearing and decision of rate increase cases preference over all other questions pending before it and to decide the same as speedily as possible . . ."

In addition to the inordinate delay in processing Greyhound's rate request, reflective of the most oppressive aspects or State regulation, on March 3, 1982, the Missouri P.S.C. directed a 17 page questionnaire to Geyhound. That Questionnaire inquires into virtually every financial aspect of Greyhound Lines, whether related or unrelated to Missouri operations or to rate increase matters, requesting massive information not only for Greyhound Lines, but also for its parent and affiliated companies. Hundreds, if not thousands, of employee hours would be required to fully respond to that questionnaire. Moreover, Greyhound Lines does not have much of the data or keeps it in another form. The requested data ranges from irrelevant document production to furture projections of fuel prices; i.e.: copies of fuel contracts; monthly schedules of fuel prices; detailed financial information for affiliates; cost of buses and parts; detailed Federal tax information; revolving credit agreements; interest rates on real estate mortgage; names, salaries and expense of officers; shares of stock traded and proceeds from each sale; corporate minutes for all matters for 3 years; insurance costs and projected increases; advertising budget for Greyhound Lines and its parent for 1981 and 1982; employee pension costs and benefits, etc.

I can candidly state that Missouri's regulatory process is every bit as burdensome as I initially represented to this subcommittee.

III. TRAILWAYS' STATEMENTS ARE INACCURATE AND MISLEADING

Mr. Theodore C. Knappen, senior vice president of Trailways, Inc., while ostensibly appearing to support H.R. 3663, took undue advantage of the forum afforded him by these hearings and engaged in an unwarranted and impertinent attack on Greyhound, not at all related to the issues concerning bus regulatory reform legislation. It is entirely inappropriate at these subcommittee hearings for Trailways to engage in a campaign of disparagement and attack on Greyhound's reputation by misleading statements and by reference to alleged past conduct which occurred many years ago.

Trailways' campaign of public disparagement of competitor was also manifest in its testimony before the Surface Transportation Subcommittee of the House of Representative on bus deregulation. Those statement were in many ways similar to the disparaging statements now presented to this subcommittee. At that time Greyhound felt compelled to correct the record before the House Subcommittee. Accordingly, on July 16, 1981 I directed a letter, attached as appendix A, to the Honorable Gleen M. Anderson, chariman, Surface Transportation Subcommittee, reponding to Trailways' allegations. I wish to incorporate that letter of July 16, 1981, as a part of this supplemental statement in order that it may be made part of the official record of this subcommittee's proceedings. I also wish to specifically respond to the most egregious of Trailways' Misstatements.

A. Intermodal Competition

Mr. Knappen's statement is misleading in that neither Greyhound nor Trailways exists in a vacuum. The primary business of these carriers is intercity passenger travel. But companies compete with all other modes of intercity travel: Auto, air and rail. Intercity bus travel account for only 2 percent of total intercity travel.[1]

The competition from the airlines has been particularly intense since that industry was deregulated. Various air carriers have specifically targeted their advertising at the bus passenger. Texas International holds out that it "offers bus fares"[2] other advertisements directed to bus travelers are asking them to tear up their bus ticket and travel by air.[3]

Nearly daily, airline advertisments promote discount and other special promotional fares which are very competitive with bus fares. For instance, as recently as March 8, 1982, the air carriers initiated another round of fare reductions, reducing the air fare between New York and San Francisco from $125 one way to $99.[4]

In response to this intermodal competition, Trailways filed a special tariff authority application (SP 937) on January 15, 1982, requesting permission to meet all other bus, rail and air fares. In support of that request Trailways stated: "The recent deregulation of airlines and aggressive marketing by Amtrak have intensified intermodal competition and thus made publication of Trailways' customer protection tariff essential. By introducing deep discount fares in selected markets, the airlines have recently become a new and serious competitive threat to bus carriers. Likewise, Amtrak's rates are unregulated by the commission and in fact are substantially subsidized by the government. Trailways should be able to compete with these "unregulated" carriers on an even footing by offering a guarantee to the public that it will not be underpriced. Moreover, Trailways' passengers—principally lower-income persons—are "cost sensitive" consumers who are entitled to the lowest rates for transportation."

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[1] Management Analysis Center, Inc., *deregulation of the Intercity Bus Industry,* (1981) p. 7, Charts II-1, II-2.

Remarks by J. Kevin Murphy, President of Trailways, Inc. NARUC's ninetieth annual convention, Las Vegas, Nevada November 13, 1978, "deregulation . . . the choice for the future of intercity bus transportation." pp. 9 and 10.

[2] *The Washington Post,* p. B-3, March 5, 1982. *The Times-Picayune,* Section 1, p. 10, February 16, 1982.

[3] *The Arizona Republic,* p. C-1, March 5, 1982. *The Washington Post,* p. D-5, March 5, 1982.

[4] *The Wall Street Journal,* p. 18, March 8, 1982. *The Washington Post,* February 12, 1982. *The Wall Street Journal,* February 12, 1982. *Buffalo Courier Express,* January 20, 1982.

With gasoline supplies ample and the price dropping towards one dollar in many parts of the country, the intercity traveler is continuing his love affair with the automobile. It has been Greyhound's recent experience that more people are driving their cars and fewer people are taking the bus because of the stabilization of fuel availability and prices.

Greyhound believes, and Trailways has repeatedly stated, that Amtrak is a formidable competitor in many markets, particularly in the east coast corridor.[5] It is common knowledge that there is keen competition for the intercity traveler not only among the various bus companies, but among the various transportation modes.[6]

B. Trailways is inaccurate in depicting Greyhound Lines

Not only does Trailways belittle its own size and strength, but it misrepresents the size of Greyhound Lines by equating its size with that of Greyhound Lines' parent company which is diversified into other non-bus related business. The revenues of Greyhound Lines are not 18 times larger than Trailways' revenues. Greyhound Lines did not earn $5.2 billion in revenue. More accurately, Greyhound's passenger revenues for the year 1979 were $728 million, which is about 2½ times the $279.9 million of Trailways, Inc., the dominant carrier, in the national Trailways bus system. Trailway's total operating revenues for 1980 were $304.5 million and for 1981, $308.9 million whereas Greyhound Lines' total operating revenues were $824 million for 1980 and $882.9 million for 1981. If the collective revenues of the other 65 members of the Trailways system were added, the aggregate revenue of these carriers would be at least one-half of Greyhound Lines'. It is also important to recognize that on a number of competitive routes which Greyhound serves, it is the smaller bus competitor.

Particularly inaccurate is Trailways' comparision of the bus industry with the airline industry. Greyhound and Trailways both shrink to rather modest size when compared with the air carriers. Twelve U.S. Air Carries had greater 1981 revenues than Greyhound Lines. Indeed United's revenues are approximately five times Greyhound Lines' revenues.

PASSENGER AIRLINE REVENUE FOR 12 LARGEST U.S. AIRLINES

[In billions]

	1980	1981
(1) United	$4.3	$4.5
(2) American Airlines	3.6	3.9
(3) Eastern	3.4	3.7
(4) Delta	3.3	3.6
(5) Pan Am (merged with National)	3.6	3.5
(6) TWA	3.3	3.5
(7) Northwest	1.6	1.8
(8) Republic (merged with North Central, Hughes, and Southern)	1.2	1.4
(9) Braniff	1.4	1.2
(10) U.S. Air	1	1.1
(11) Western	1	1.1
(12) Continental	1	1.1

Source: Air Transport 1980 "Annual Report of Scheduled Airline Industry." and CAB form 41, financial data.

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[5] "Statement of Theodore C. Knappen, Senior Vice President, Trailways, Inc., on the restructuring of Amtrak" pp. 1, 4, 5, 6 and 8. Hearings before the rail services Planning Office, Washington, D.C., June 26, 1978.

Remarks of J. Kevin Murphy, *supra*, note 1, pp. 8 and 10.

[6] James C. Schultz, Vice President and General Counsel, Trailways, Inc., "Intercity passenger market public vs. Government regulation regulatory reform of intercity bus industry (regular route and charter), December 11, 1978 pp. 3-7.

In addition, the growth of regional air carriers has been astounding and aggressive, and the bus industry has experienced severe competition from these air carriers.

C. Trailways' statements are inconsistent

In other proceedings and forums Trailways has often depicted itself as a strong, vibrant and growing leader of the bus industry rather than a poor beleagured competitor barely able to maintain its market niche. The motives surrounding these contradictory statements can only be surmised. What is obvious, however, is that a vastly different picture of Trailways is offered by its executives outside of legislative hearings. The July 1980 issue if New Trails, a Trailways magazine, unequivocally states that there will be: "More red (Trailways) then blue (Greyhound) buses on the roads within 3 years."

Trailways' magazine entitled "Big Red" subtitled "Trailways, the driving force in the bus industry of the 1980's" optimistically states that Trailways will take a leadership role in the tranportation industry and Trailways is "the new leader in the bus industry." "New terminals, new fares, new services and a rapidly expanding bus system have America choosing to go Big Red." The March, 1982, Trailways' publication Trailgram, proudly proclaims: "Trailways' 'meet or beat' fare policy remains unchallenged by any other transportation company with the exception of Delta Air Lines, which recently followed the Trailways "lowest fare" concept but restricted it to airlines. "Naturally, Greyhound isn't even admitting there's a price war going on in the travel industry," stated Robert Buschner, Trailways' vice president, passenger sales. "They're out there offering customers the same seasonal sales with a gamut of restrictions. Our 'meet or beat' program promises all our passengers a refund if they pay more for a Trailways ticket than they should have for any other means of transport, where we operate. We're not just undercutting other bus lines, we're undercutting everyone on the ground or in the air."

"Greyhound keeps insisting there's no price war going on in the bus industry," said Buschner. "I can understand their position since they have yet to effectively compete with us."

It is also noteworthy that Trailways projects that its bus manufacturing affiliate, Eagle International, which produced 200 intercity buses in 1979 will be producing 1,800 buses a year by 1983, according to Stephen W. Griffith, executive vice president, Trailways, Inc., (*Bus Ride Magazine*, November 1980 and New Trails, August-September 1980).

D. Trailways refers to long past history

It is noteworthy that the case which Trailways cites, *Greyhound Corporation v. Mt. Hood Stages, Inc.*, 437 U.S. 322 (1978) relates to alleged conduct which occurred more than a decade ago. No similar conduct or proceeding has occurred since that time. Indeed, both the Interstate Commerce Commission and the U.S. Court of Appeals for the District of Columbia have acknowledged that there is no indication or suggestion that Greyhound has engaged in improper conduct or questionable practices since that time. The court, in reviewing Greyhound Lines' actions over the years, found in *Greyhound Corporation* vs. *Interstate Commerce Commission,* D,C, Cir. case No. 80-171, decided November 6, 1981, stated: "We are thus left with the improper behavior rationale for continued jurisdiction. The Commission places great emphasis on Greyhound's prior behavior as justification for continued regulation. The behavior at issue, however, occurred between 1965 and 1969. 1978 order, 127 M.C.C. at 353-54. There is no indication or suggestion that Greyhound has engaged in improper conduct or questionable practices since that time." (p. 14)

The court went on further to say: "We conclude that, absent additional facts, reliance on 1965-69 behavior of Greyhound is unreasonable." (p. 15)

Similarly, the Commission in its day-to-day regulation of bus companies has found that Greyhound Lines should not be singled out for regulation under different standards than those applied to other carriers. It is less than responsible for Trailways to resurrect long past history to raise obtuse issues in this forum.

E. Trailways' management is Greyhound Lines' former management

Virtually all of Trailways' top management are former Greyhound Lines executives. Trailways' chairman was the chairman of Greyhound Lines. Trailways' president was the president of Greyhound Lines. Trailways' executive vice president and other officers are all former executives and officers of Greyhound Lines. Trailways' current management is intimately familiar with all of Greyhound Lines' operations, its service, its structure, and its financial capability. It is, therefore, ironic that a whole cadre of former Greyhound Lines executives in a private transaction acquired Trailways and its 14 wholly owned subsidiaries. It is even more ironic that these individuals who had spent their careers with Greyhound have undertaken a campaign to criticize Greyhound's conduct, primarily conduct during the period of time in which they were the controlling executives.

F. Trailways inaccurately depicts its size and the competitive posture of the bus industry

Trailways is the self-proclaimed bus industry giant.[7] The National Trailways Bus System consists not only of Trailways, Inc. and its 14 wholly owned subsidiaries but, also, of 65 independent carriers who operate under the name and style of Trailways. These carriers collectively constitute a nationwide bus network comparable in every respect with Greyhound.

This comparison is graphically evident from the attached appendix B which depicts the National Trailways Bus System, on page 1, and Greyhound Lines' system on page 2. A review of Trailways' route map shows that Trailways serves virtually every significant market in the United States which Greyhound serves.

Trailways' has characterized itself as a vibrant, exciting and growing company. In the August-September 1980 issue of New Trails we find the following Trailways prognostication: "Trailways is a vibrant, exciting, growing company. As we look ahead, toward healthy competition in our industry, toward more red (Trailways) system buses on the road than blue (Greyhound) . . ."

The same issue of New Trails states without qualification that Trailways is "one of the worlds fastest growing transportation companies." Even more recently in the March issue of Dallas magazine, Trailways proclaimed that it will end up being "the largest bus system in the world."

IV. THE ENTIRE THRUST OF H.R. 3663 IS TO BRING ABOUT LESS REGULATION AND LESS GOVERNMENT INTRUSION INTO DAY-TO-DAY PREROGATIVES OF A BUS COMPANY'S MANAGEMENT

In at least three specifics H.R. 3663 is inconsistent with the thrust and purposes which underlie regulatory reform. The employee protection provisions of section 27, the terminal study provisions of section 26, and citizen band radio provisions of section 25 are reflective of more, rather than less government regulation in areas where none is needed.

A. Employee protection provisions

The employee protection provisions are a precursor to substantial regulatory initiatives and regulatory constraints where none exist nor are needed. Bus companies should be able to contract, expand and diversify their services in response to the dynamic forces present in the passenger transportation industry. In specific markets, schedule increases or changes in response to competition from automobiles, Amtrak and the airlines may be desirable. An "eligible employee" could assert that any experimental schedule increase and subsequent reduction of that experimental schedule could trigger the employee protection provisions contained in section 27. As a result, bus companies may be reluctant to experiment or expand their services when market forces would suggest such expansion for fear that any subsequent reduction in service could trigger the provisions of section 27.

As a result of section 27, the I.C.C. may require each class I bus carrier to file "reports, data and other information." These provisions, depending on the regulator's philosophy, may be implemented on a very expansive basis, requiring a needless waste of carrier resources and employee time to meet regulatory purposes rather than purposes which are in the best interest of efficient bus company operations.

B. The terminal study is unnecessary

It seems incredible that H.R. 3663 should in one part urge a substantial lessening in regulation and then in another propose congressional sanction for a wasteful, bureaucratic make-work project possibly calculated to lead to new and more oppressive regulation. It is fair for the Congress as well as the bus industry to ask why, if a terminal study would be of any value, the I.C.C. has not undertaken one before this? Could it be because no problems exist or are even foreseen with respect to terminals? As the saying goes, "if it ain't broke don't fix it". After all, it has been 47 years since the passage of the Motor Carrier Act of 1935. It is very difficult to escape the conclusion that some professional students are fishing around for something to keep them busy. Such a project would, however, not only waste the taxpayers' money, but it would also impose upon the bus industry at a time of change. The burdens of such a study would generate uncertainty as to the future and make illusory for a year and a half or more most reductions of other types of regulatory burdens. What kind of plans and commitments can carriers make if some new and unknown form of regulation hangs over their heads?

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[7] Press release Dallas, Texas, January 8, 1982 entitled: "Trailways vows to meet or beat any bus industry fares."

It may very well be that a review of the progress of the bus industry under regulatory reform similar to that which Congress intends with respect to the airline and trucking industries would be appropriate. Whenever Congress may wish to undertake to examine these matters, it can be assured of Greyhound's cooperation. I hardly think, however, that one can legislate in advance and in a minute detail for a dynamic industry and a dynamic situation. Likewise, I hardly think a study made of today's terminals by the I.C.C. or the Department of Transportation, before regulatory reform is even fully implemented, will provide a reliable indication of the significance of terminals to the longer term prospects of this industry.

C. CB radios

The provisions of section 25 of regarding the study of citizen band radios is particularly intrusive into managerial prerogatives. If CB radios significantly improve safety than their use should be mandated not only for bus but trucks and autos also. The proponents here, however, would leave the decision to each driver to determine if there is a safety benefit and then whether he or she wishes to offer that benefit to passengers.

CB radios have been the subject of serious deliberation by Greyhound Lines' management over the years. Greyhound has had firsthand experience with two-way radio service. Some years ago our Great Lakes Greyhound subsidiary equipped its entire fleet of some 400 buses with two-way radios, installing the necessary relay towers and technical equipment to provide contact throughout the State of Michigan. These buses remained equipped with two-way radios for a period of 3 years during which time there was no recorded instance of an emergency call. There was, of course, some use in reporting mechanical problems and schedule delays. However, the little benefit realized did not come close to justifying expensive installation and maintenance costs. The two-way radios were removed. Moreover, the effective range of the two-way radios was substantially greater than the comparatively short range and other technical limitations which are inherent with CB radios.

In our experience we have found that the CB radio's primary purpose is the evasion of the 55 mile an hour speed limit. We strongly oppose allowing our drivers to have any device, CB radio, Fuzz Buster or other technical equipment which would be used to circumvent law enforcement efforts for speed compliance.

Our principal concern however, is in the area of safety and driver distraction. In the and use of CB radios the driver has to take his hands off the steering wheel and his eyes off the road while manipulating the dials and responding to communications. Greyhound Lines enjoys an enviable safety record and any change in policy must be made with a view toward enhancing that record, not jeopardizing it.

The U.S. Department of Transportation in recognition of the high degree of safety expected of transportation companies precludes driver distraction in order to insure driver attentiveness and the safety of operations. For this reason, passengers are asked to refrain from talking to the driver while driving. We strongly feel that CB radios would seriously distract our drivers from their primary responsibility of devoting their full attention to the operation of the equipment. Our continued and full review of both advantages and disadvantages of the use of CB radios leads us to the opinion that the disadvantages and limitations on use of such equipment far outweigh any advantages.

Greyhound Lines is proud of its safety record and its continuing safety programs. We constantly strive to improve that record through mechanical improvements in our equipment, constant training and safety programs of our drivers and employees. If there were any recognizable safety benefit derived from CB radios, Greyhound Lines would long ago have implemented them voluntarily. Greyhound believes that it is in the forefront of safety enhancement and safety programs, and no legislation is needed to encourage such management action.

The asserted benefits of CB radios are non-existent. Channel 9, the emergency channel, and channel 19, the channel generally used by truck drivers are an incomplete communication system. Most government emergency vehicles and most State highway police departments do not require CB radios in their vehicles. Communications which would be received by the State policy would most likely be through their regular communications system. The management survey citizen band radio project of the California Highway Patrol May 1979 conducted by the traffic center, Institute of Safety and Systems management University of Southern California refutes many of the asserted benefits of CB radios. That scientific and comprehensive study made the following findings:

1. CB radios did not reduce CHP (California Highway Patrol) notification time.
2. Reporting of violations involving accidents while under influence increased 0.1 percent in CHP areas with CB radios.
3. Detection and apprehension of other extra hazardous drivers increased 0.1 percent in CHP areas with CB radios.
4. Accident severity and incident detection times were not reduced in CHP areas with CB radios.
5. Officers in CHP areas with CB radios provided 2.1 percent more information responses that officers in non-CB radio areas.
6. Availability of individual road officer did not increase in CHP areas with CB radios.

In Greyhound Lines' experience, when the asserted advantages of CB radios are analyzed we find that the justification is largely emotional, and without any factual basis. The following are some of the major disadvantages of CB radios.

1. Physical distraction of drivers in that they take their eyes off the road and hands off the wheel while driving in order to manipulate the CB devices, resulting in safety hazards.
2. Annoyance of passengers and resulting noise pollution as a result of constant chatter on CB radios.
3. Driver distraction as a result of chatter.
4. Vulgar, abusive and obscene language which is present on the CB radio airwaves on a regular basis.
5. Severe technical limitations of CB radios in that they are virtually impossible to use in the cities and difficult to use when there is uneven terrain, mountainous terrain and adverse weather conditions.
6. The cost of installing and maintaining CB equipment outweighs any potential advantage.
7. Drivers advocate the use of CB radios to frustrate law enforcement of the national maximum speed law.
8. Unnecessary conversations and distractions of drivers are violations of section 392.62 of the Federal Motor Carrier safety regulations.
9. The use of CB radios, at best, provides an incomplete communication system in that all law enforcement agencies and emergency vehicles are not equipped with CB radios.
10. The use of CB radios has been actually demonstrated to cause accidents as a result of driver distraction.
11. The use of CB radios interferes with the ability of the driver to be aware of the bus environment and external environment to meet potential safety problems and is aggravated if earphones are used by the driver.
12. The asserted stated benefits of CB radio use are eliminated upon analysis of specific fact situations if the driver follows proper safety and defensive driving techniques.
13. The compelled use of CB radios would be an undue interference in the collective bargaining relationship.
14. Bus company managements have a high regard and a keen sense of safety for their passengers and any compelled use of CB radios would be an adverse intrusion into this managerial prerogative.
15. Constant CB chatter could potentially cause driver fatigue.

These listed disadvantages point to the fact that the use of CB radios can be and is a safety hazard rather than a safety enhancement device.

U.S. DOT FOUND CB RADIOS DO NOT INCREASE BUS SAFETY

The U.S. Department of Transportation concluded on January 9, 1980 after a full hearing on the benefits and disadvantages of the use of CB radios: "The FHWA's authority in this area is limited to the extent that it can be shown by meaningful evidence that CB radios have a direct effect on the safety of operations of a motor vehicle. Adequate evidence of this nature did not surface from the data submitted at the meeting or subsequent thereto."

After these extensive hearings regarding the investigation of practice of Greyhound Lines and Trailways and other carriers, which included extensive testimony from CB enthusiasts, the U.S. DOT found that CB radios do not increase bus safety. The myth and folklore which has developed around the issue of use of CB radios is just that. Authorities have been told and retold of accidents which could have been avoided if the driver had listened to a CB radio. Unfortunately, these instances cannot be substantiated. But this doesn't stop the folklore and mythology from continuing.

Greyhound believes, absent a discernible safety benefit, management of bus companies, rather than legislation, should determine whether or not CB radios will be utilized for the safety of passengers and the public. As a result, Greyhound opposes section 25 of H.R. 3663 and requests that that provision be deleted.

Appendix A

GREYHOUND LINES, INC.,
Phoenix, Ariz., July 16, 1981.

Hon. GLENN M. ANDERSON,
Chairman, Surface Transportation Subcommittee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On June 3, 1981, you afforded me the opportunity to testify in support of H.R. 3662, a bus regulation reform proposal advanced by The American Bus Association.

After I testified, the Committee heard from Theodore C. Knappen, Senior Vice President of Trailways, Inc. While ostensibly appearing to assert support for that measure, Mr. Knappen sought to persuade the Committee to adopt a number of changes to H.R. 3662 which were intended to put his company, Trailways (the second largest carrier in the bus industry), and the National Trailways Bus System (a group of companies subject to the influence and control of Trailways), in a privileged position relative to Greyhound and the numerous smaller carriers which do not belong to the National Trailways Bus System.

In the pursuit of that objective, Mr. Knappen took advantage of the platform afforded him by these hearings to engage in an unwarranted and impertinent attack upon Greyhound, not at all germane to the merits of bus regulatory reform. These hearings are scarcely an appropritate time or place to seek publicity for a campaign of commercial disparagement intended to harm Greyhound's reputation and to alienate both current and potential passengers and other carriers, especially those who still remain free of Trailways' influence and control, and who may wish to interline or establish through routes with Greyhound to the benefit of the travelling public. Since the Committee's hearings have been used by one carrier for what is, in effect, an ad hominem attack upon another, I respectfully ask the Committee to permit Greyhound the opportunity to respond to these charges on the record, because if Greyhound allows these assertions to go unanswered, that silence could be perverted by Trailways into an indication of acquiescence.

We think the Committee should also know that Mr. Knappen's "doom and gloom" allusions to a beleaguered Trailways, barely able to exist in a competitive marketplace, are dramatically at variance with the repeated assertions of Trailways' management in other forums to the effect that Trailways is the industry leader and soon will be larger than Greyhound.

I. TRAILWAYS INACCURATELY DEPICTS THE COMPETITIVE WORLD IN WHICH INTERCITY BUS COMPANIES OPERATE

Mr. Knappen's lurid charges are all founded upon a false picture of monopolies, antitrust violations, predatory practices and the like. Trailways is trying to misinform members of this Committee, presumably in the hope that members' busy schedules will make it difficult for them to gain a degree of familiarity with the bus business which would provide an automatic corrective to Trailways' distortions. It is significant that neither Trailways' charges nor its request for anti-Greyhound legislation have found acceptance or echo in the testimony of such varied non-industry witnesses before this Committee as Secretary of Transportation Lewis, Acting Deputy Assistant Attorney General Carr, Acting Chairman Alexis of the Interstate Commerce Commission, Commissioner Johnson of the Pennsylvania Public Utilities Commission, and Counsel for the Transportation Consumer Act Project (TCAP).

The distortion most consistently made by Trailways is the gross exaggeration of the size and economic power of Greyhound. While Greyhound is recognized as the nation's largest intercity bus line, at least one other company, Transport of New Jersey, which combines intercity, commuter and transit activities, carries many more passengers. Greyhound Lines is not 17 times larger than Trailways, however, and it did not earn $5 billion in 1980, as Mr. Knappen would have this Committee believe. On the contrary, Greyhound Lines received passenger revenues of $728.1

million in 1979, which is about 2½ times the $279.9 million Trailways, Inc., the largest carrier in the National Trailways Bus System (NTBS), received.[1] While Mr. Knappen referred to the same 60 carrier members of the Trailways system, he did not advise the Committee that the aggregate revenues of that system, in all probability, are at least one-half of Greyhounds. Thus, compared to many of the regional bus carriers, both of these two nationwide companies are quite large and there is little difference between them from the perspective of the smaller carrier. Although Greyhound's revenues exceed those of Trailways, Trailway's itself has revenues over 20 times larger than the $11 million Trailways claims is the average for the Class I carriers other than Greyhound and Trailways. Moreover, actual head-to-head comparisons are not a matter of nationwide significance. On a number of the competitive routes it serves, Greyhound is the smaller competitor. Using a classic measure of economic viability, 14 smaller carriers had operating margins better than Greyhound's in 1979; of these 4 were independent members of the National Trailways Bus System other than Trailways.[2]

Of course, even Greyhound and Trailways shrink to a rather modest size when compared with air carriers. In 1979, six air carriers (if one combines Pan Am and National) were each more than 50 percent larger on a revenue basis than the entire intercity bus industry (Classes I, II, and III, with total revenues of $1,627 million): United $2,751 million, American $2,725 million, Eastern (including Canada) $2,623 million, TWA $2,504 million, Delta $2,432 million, and Pan Am National $2,484 million.[3] Ten carriers were larger than Greyhound in 1979. Preliminary reports indicate that twelve air carriers were larger than Greyhound in 1980. The growth in passenger revenue of the smaller air carriers has been astounding, especially numbers 11 through 14:

[In millions]

	1979	1980
U.S. Air	$650	$890
Republic	527	1,125
Frontier	340	411
Piedmont	265	374

These are the "giants" against which all bus carriers compete. The intercity bus industry as a whole carries only 1.7 percent of all intercity travel in the United States. Even when the private automobile is excluded bus lines carry only 10 percent of intercity traffic.[4]

II. IN OTHER FORUMS TRAILWAYS DEPICTS ITSELF AS A STRONG, VIBRANT, GROWING LEADER OF THE BUS INDUSTRY

Mr. Knappen's bleak view of Trailways competitive posture and strength does not square with the views of the head of his company. James L Kerrigan, Chairman and Chief Executive Officer of Trailways, recently reflected on the first 12 months of his leadership at Trailways in the August-September 1980 issue of New Trails, his company's magazine; "Trailways is a vibrant, exciting, growing company. As we look ahead, toward healthy competition in our industry, toward more red (Trailways) system buses on the roads than blue (Greyhound). . . ."

The same issue of New Trails states without qualification that Trailways is "one of the world's fastest growing transportation companies."

The July 1980 issue of New Trails unequivocally states that there will be: "more red (Trailways) than blue (Greyhound) buses on the roads within three years."

And only days after Mr. Knappen testified before the Committee on June 3, 1981, Trailways distributed Volume I, Summer 1981 edition of a magazine entitled "Big Red" subtitled "Trailways, The Driving Force in the Bus Industry of the 80's". Trailways' Chairman optimistically stated: "This is the inaugural issue of a very important publication; a publication that addresses and analyzes the transportation future of this nation.

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[1] Revenue from QPA reports submitted to the ICC by Class I Carriers.

[2] Management Analysis Center, Inc., *Deregulation of the Intercity Bus Industry,* Table III-5.

[3] 1979 date: Air Transport Assn., *Air Transport 1980*; inquiry to ATA.

[4] Transportation Association of America. *Transportation Facts and Trends.*

Within the intercity bus mode, moreover, regional and shorthaul carriers carry the bulk of the load, although their revenue from these shorter trips is understandably less. Using this measure, Greyhound and Trailways, accounted in 1979 for only 17 percent and 6 percent, respectively, of the passengers carried in regular route operations and merely 4 percent and 2 percent, respectively, of the charter passengers carried.[5] (Both systems have grown at an equally slow pace under ICC regulation—in 1940 Greyhound carried 16 percent and Trailways 5 percent.)[6] Mr. Knappen's contention that Greyhound has a 70 percent market share in the intercity bus industry is highly misleading. As Mr. Long, a small carrier witness, testified, carriers other than Greyhound and Trailways carried "almost 70 percent" of bus passengers. Even on a revenue basis, Greyhound and Trailways and their subsidiaries *combined* receive only 62 percent of intercity revenues (Greyhound 44 percent and Trailways 18 percent, respectively),[7] a statistic which also appears on the Committee's "Bus Industry Profile" and in the testimony of the Department of Justice, Secretary of Transportation and other witnesses more authoritative—or less biased—than Trailways' Mr. Knappen.

The publication will take a leadership role in discussing America's transportation options and opportunities.

"BIG RED", and Trailways, as clearly stated on the cover, will be the "driving force in the bus industry of the '80's."

The publication is replete with similar expressions of Trailways' strength and optimism: "Trailways the new leader in the bus industry." New terminals, new fares, new services and a rapidly expanding bus system have America choosing to Go Big Red.

Trailways' impact upon the transportation industry has become the talk of the traveling public. In a little over 18 months, the new Trailways has carried almost 27 million people nearly four billion passenger miles—

* * * * * * *

Trailways' commitment to building and maintaining the most modern bus terminals is evident in that this year more terminals will be either completed or remodeled than ever before.

* * * * * * *

But promotions don't bring people back—their experience on the bus, in the terminals, and with our employees is what brings them back. Indeed, the success of any promotion is directly attributable to our employees. And Trailways has had the most successful promotions of any bus company in the last 18 months."

"The fact is, not only are we getting better, we're making the intercity bus industry better. That's what happens when there is competition," concluded (Trailways Vice President) Mr. Buschner.

* * * * * * *

This winter it was once again apparent that Trailways is the fastest growing bus company in the United States, as six new members jumped aboard the National Trailways Bus System (NTBS).

It is obvious that when Mr. Knappen testified "In short, we are playing with a stacked deck and Greyhound has already been dealt the winning hand" he was not reflecting the views Trailways advances outside of the hearing room.

Greyhound can concur with the optimistic view of the future of the intercity bus industry, particularly if meaningful reform legislation is enacted which will produce the benefits of marketplace competition.

And finally, I believe a brief comment on Mr. Knappen's predation theory is in order. Economists agree that the structure of the bus industry, with its low operating margins, strong regional carriers, and powerful competition from other modes, (especially the private automobile) render this predation theory unworkable. This analysis is further buttressed by the position taken at the hearings by the

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[5] *Supra*, note 2, Table III-9.

[6] Burton B. Crandall, *The Growth of The Intercity Bus Industry*, Syracuse, 1954.

[7] *Ibid*, p. 16.

U.S.D.O.J. and others. In short, it is another theoretical, but baseless attack by Trailways on Greyhound.

Yours very truly,

WILLIAM L. MCCRACKEN,
Senior Vice President,
Assistant to the Chairman.

STATEMENT OF WAYMON WRIGHT, EXECUTIVE DIRECTOR, MINORITY TRUCKING TRANSPORTATION DEVELOPMENT CORP.

Mr. Chairman, on behalf of the Minority Trucking Transportation Development Corporation (MTTDC) Board of Directors and the general membership, I would like to thank you for giving us the opportunity to state our views regarding H.R. 3663, the "Bus Regulatory Reform Act of 1981," and submit this statement for the record.

MTTDC is the only national trade association that represents the minority and other small carriers in the transportation industry. Our members, all of whom are small companies, are organized around four major conferences, one of which is the passenger carrier conference, hence our interest in H.R. 3663.

First of all we would like to go on record supporting your efforts to reform the bus industry, where the worst aspects of regulation are more evident than in any other sector of the surface transportation field. The need for such a reform is only too real. In addition to inhibiting competition, innovation and efficiency, half a century of restrictive regulation has lead to serious concentration and monopolistic practices by two major companies in the industry.

H.R. 3663 has the potential to rectify these problems just as the reform regulations introduced by the Motor Carrier Act of 1980 and the Household Goods Reform Act have done in their respective sectors of the transportation industry.

I. FAILS TO ADDRESS IMPACT ON SMALL BUSINESS

However, in its present form, the bill does not give adequate consideration to the problems and needs of small and minority carriers which constitute by far the majority number involved in this key industry.

Our idea of a small business is not Trailways, vis-a-vis Greyhound; we are referring to the thousands of struggling small firms hovering between survival and going under, especially during this recessionary period. Because they don't have the luxury of extra capital and the high-powered legal and management expertise of the big companies, these smaller companies have always been at a disadvantage in competing with Greyhound and Trailways for new markets. Interstate Commerce Commission (ICC) records of the last decade, for example, show that while the Commission approved between 80 to 90 percent of Greyhound and Trailway applications for new routes, it granted only one third of those sought by small firms.

This problem manifests itself in scores of other ways in practically every facet of operation ranging from entry to exit.

MTTDC, therefore, strongly recommends that Congress make a special determination on the bill's likely impact on small and minority transportation businesses and direct the agencies charged with implementing the statute to give special consideration to such firms in their attempts to enter the mainstream of the bus industry. In the absence of such congressional mandate to protect small business, the unhealthy concentration that is so evident in the industry today will continue at minimum, and most likely grow in magnitude resulting in higher transportation cost for the consumer.

II. LEAVES UNNECESSARY ENTRY RESTRICTIONS

As the national spokesman for minorities in this industry, MTTDC is greatly concerned about those provisions in the bill that tend to throttle competition and restrict entry of new able, fit and willing carriers into the market for the convenience and service to the public.

Because of historical and social reasons, minorities and women are very much underrepresented in all sectors of the industry. It was in realization of this fact that Congress mandated the ICC and other agencies charged with implementing the new motor truck law to increase minority involvement in the motor carrier system. The mandate when fully implemented is expected to rectify this historical regulatory deficiency.

This mandate, which was called for and sponsored by MTTDC, is also fully endorsed in H.R. 3663 which directs the regulatory agencies "to promote greater participation by minorities in the motor carrier system." However, what it gives with one hand, it seems to take away with the other. A. In the area of entry, though the bill shifts the burden of proof from the applicant to the protestant, it complicates the "fitness" test by not defining and delineating the standard to the extent necessary to avoid confusion and delay in the application process by unwarranted protests. Such ambiguity would undermine the basic purpose of the "fitness" test. B. Furthermore, *Section 6* restricts regular route authority if the Interstate Commerce Commission found that such an authority would divert substantial revenues and services from the existing carrier. Here the question is not whether it stimulates competition, or protects the public but whether one carrier loses some portion of its service. This is hardly a reform and the provision would only perpetuate the monopolistic structure the bill purports to change and inhibit the free enterprise system that the bill should enhance.

If it is not deleted or substantially changed, the provision would serve as a potent weapon in the hands of market incumbents to insulate themselves from the pressures of competition. This in turn will keep those Americans who were historically and socially excluded from the industry on the periphery of the market. We are sure that is not the intent of Congress.

III. INSURANCE LEVELS ARE PROHIBITIVE

Section 18 is also another case in point. H.R. 3663 raises almost ten fold the current ICC insurance requirements for motor passenger carriers.

What does such an abnormally big hike mean to the small and minority passenger carrier? A compilation of inter-city bus insurance rates prepared by the American Insurance Association (Attachment A) shows that a $5,000,000 minimum level would more than double the carrier's insurance cost. While the big established carriers would absorb this cost through additional revenues and cash reserves, the higher levels would no doubt have a devastating effect on the smaller companies, the majority of which are fighting to avoid going out of business.

Furthermore, raising the minimums to such a high level would also serve as an informal entry barrier, as it would prevent those who cannot afford such a coverage from entry to the market. Such a result would be contrary to the basic purpose of the bill. One of the objectives of the legislation is to *revise* existing federal regulations which tend to inhibit "opportunities for minorities and others to enter the motor bus industry." (*Section 3.*)

In a recent MTTDC survey of member bus companies, we also found that the carriers have an average coverage of a little over one-fifth of what the bill proposes for buses with 15 or more passengers. The carriers included in the survey believe the proposed limits are unnecessary and would in the long run drive them out of business, as well as prevent entry to the interstate level.

SUMMARY AND RECOMMENDATIONS

H.R. 3663 has the potential to rectify the serious problems of concentration and regulated monopoly in the bus industry provided some major adjustments are made to substantially ease entry restrictions. Furthermore, this will require more specific regulatory guidelines that ensure the promotion of opportunities and participation of minorities and other small and economically disadvantaged carriers in the motor bus industry, in accordance with the purpose of the bill. This can be accomplished, in part, by:

A. Narrowing and delineating more specifically the standard for the "fitness" test.

B. Deleting that part of Section 6 (paragraph 3) which would inhibit competition and restrict entry by allowing the ICC to make determinations on applications for new routes not on the basis of the public interest but whether a new entry would divert revenues and services from an existing carrier.

C. (a) Deleting from the bill specific references to minimum dollar levels for financial liability for motor passenger carriers.

(b) Delegating the determination of these levels to the Department of Transportation with specific guidelines requiring special consideration for the small and minority carrier as specified in D below.

D. Adding language that would specifically mandate the respective regulatory agencies to give full and complete consideration to the condition and needs of small companies as their survival would determine whether there is going to be competition or not in the industry.

STATEMENT OF ANNE P. CANBY, NEW JERSEY COMMISSIONER OF TRANSPORTATION

Mr. Chairman, I am Anne P. Canby, Commissioner of Transportation for New Jersey and Chairperson of the Board of NJ TRANSIT, the statewide public transportation agency. I appreciate the opportunity to submit for the record testimony in regard to the deregulation of the intercity motor bus industry.

The formal testimony presented to you so far has failed to address the effects of bus deregulation upon interstate commuter bus service. I was particularly disturbed by Secretary Lewis' proposal which removed all references to commuter buses from the House bill (H.R. 3663). The issue of commuter bus and the unique bus problems the State is experiencing in Atlantic City are the focal points of my testimony. Both of these concerns are adequately provided for in the H.R. 3663, which New Jersey supports.

In order to provide a context for my remarks, I would like to briefly explain the bus situation in New Jersey. In 1979, the State Legislature responded to the crisis confronting public transportation in New Jersey by creating the New Jersey Transit Corporation (NJ TRANSIT). This is the only statewide transit corporation in the country, and is currently providing daily service to approximately 255,000 passengers, of whom about one half travel interstate. In addition, more than 200 privately-owned carriers also hold Interstate Commerce Commission (ICC) certificates to provide intercity service. These private bus companies are regulated by the Department of Transportation for their intrastate routes. For both NJ TRANSIT and the private bus carriers, commuter bus service is a major portion of our service. Thus, the State has striven to ensure the unique balance between public and private operators, by constantly monitoring the effects of our regulation on the industry and by being in the forefront of relaxing regulatory procedures. While there are still restrictions placed on intercity carriers, these restrictions do not hamper the operation of long-distance bus service in New Jersey. We do not have restrictive "closed-door" policies. We do not have lengthy delays in ruling on entry applications. We do not place many restrictions on a carrier's ability to abandon service. We do not attempt to maintain intrastate fares at levels far below those charged for interstate travel. New Jersey has succeeded in maintaining viable bus competition while ensuring, through regulation, the State's ability to provide public transportation. This fact is attested to by the fact that intercity carriers have raised no complaint with regard to bus regulation in New Jersey.

As you know, New Jersey has recently legalized casino gambling in Atlantic City. One of the ramifications of this has been the profusion of buses bound for Atlantic City, given its choice location close to the major cities in the Northeast and Mid-Atlantic states. Indeed, during the summer an average of 800 buses a day enter the City. Next to the bus terminal of the Port Authority of New York and New Jersey this is the second highest daily bus traffic in the country. Unfortunately, Atlantic City's streets were not designed to handle this volume, and this situation is aggravated by the fact that the City is an island with only three access points from the mainland.

In light of this background, New Jersey is deeply concerned about the effect that total deregulation will have upon us. With respect to commuter bus service, we have three basic concerns that we feel must be addressed. They are:

Deregulation would permit operators to "skim" profitable peak-hour routes. Commuter operators generate the majority of their profits during peak hours. During other times, the profitability of the service is marginal at best. Thus, the loss of ridership during peak hours could make a profitable private carrier operate at a deficit. Without the concentration of riders during certain times of the day off-peak service would be unaffordable. For state-owned carriers, loss of peak period ridership could undermine the State's ability to provide continuous service at prices that are affordable.

Deregulation would encourage numerous new carriers. In an already highly competitive and finite market, additional competition would splinter the ridership market to the point where no operator would net sufficient profits, thereby jeopardizing the millions of dollars invested by private bus operators and NJ Transit in the current market. The weakening of the economic position of commuter operators would be a severe blow in maintaining effective commuter bus service.

Deregulation would destroy the delicate balance the State has achieved with the 200 private carriers, NJ Transit and the public. Competition on commuter routes in New Jersey is strong. Many routes have several private operators competing among themselves, as well as against the State owned carriers. Riders in New Jersey do not lack options as to the bus company they elect to patronize. However, deregulation which would remove the State from participating in the management of the commuter bus operations would destroy the mix of commuter service in New Jersey.

The importance and uniqueness of computer bus service are recognized in H.R. 3663, the Bus Regulatory Reform Act of 1981, passed by the House of Representatives. The House bill, which removes many of the restrictive burdens on long-haul intercity carriers, maintains some protection for commuter operators. As passed, H.R. 3663 instructs the ICC to consider the adverse impact on commuter bus service during hearings on entry and exit applications. The ICC, however, would continue to have the flexibility to determine whether such impacts were significant enough to deny a request for entry or exit. The House bill does not attempt to limit competition or to maintain rigid control over commuter routes. Rather, the bill attempts to mitigate impacts that would disrupt a service that is already competitive and vital to many regions of the nation. In my judgement, these provisions must be retained in order for deregulation to serve the needs of the public.

Our concerns about deregulation and its effects upon charter and specials entry into the market and the preemption of the State. Given the volume of the bus traffic to Atlantic City, New Jersey must be able to retain some management control of the buses entering the city. Without the State's participation in the management of intercity bus traffic the citizens of Atlantic City will be adversely affected by congestion and bus emissions. Furthermore, the State has a responsibility to protect legitimate operators and citizens from illegal bus providers taking the advantage of the "special" category for buses. New Jersey does not permit this category, because of the lack of State control over "specials."

H.R. 3663 recognizes the effect that deregulation could have on such areas as Atlantic City and provides some assistance by exempting charter and special operations in casino areas form the liberalized standards, thus providing the State with some margin of management control. I am in support of the House provision and I strongly urge that you retain this language.

In conclusion, New Jersey supports legislation that improves the economic health of the motor bus industry and the services available to the general public. Commuter bus service in New Jersey, however, is unique. In addressing the issue of whether commuter bus service should be considered as an exception to the general thrust of complete deregulation, these questions must be asked. Does deregulation increases or decrease the competition on commuter routes? Does deregulation maximize the profits or increase losses on commuter routes? Under deregulation, will commuter bus service come closer to meeting, the public's needs or will it create a gap between the public's need and the ability to provide service? Finally, does dergulation permit an equitable solution to meet the motor industry's need for flexibility and the State's need to minimize the adverse effects associated with the delivery of essential commuter bus service? The answers to the above questions, I believe, indicate that commuter bus operations and the general public would be adversely affected by complete deregulaiton.

I appreciate the opportunity to include New Jersey's statement as part of the record on bus deregulation hearings before the Senate Subcommittee on Surface Transportation.

STATEMENT OF WILLIAM C. HENNESSY, COMMISSIONER, NEW YORK STATE DEPARTMENT OF TRANSPORTATION

I appreciate this opportunity to present the views of the New York State Department of Transportation on The Bus Regulatory Reform Act of 1981 (H.R. 3663).

Of major concern to New York State are the provisions of Section 17 of the Act which would empower the Interstate Commerce Commission to grant intrastate rate increases to bus companies above the rate levels that have been found to be just and reasonable by state regulatory agencies.

As Commissioner of Transportation I am mandated by state law to provide the public with a safe and adequate bus transportation network at reasonable fare levels. In addition to these regulatory responsibilities, the Department also administers capital grant funding and operating assistance funding to the bus industry. All of these programs . . . economic regulation, capital funding and operating assistance funding . . . are interrelated to provide the environment needed to encourage a viable bus network.

State agencies are close to the legal transportation scene and in a far better position than a federal agency to make the regulatory decisions that have to be made in the best interests of the riding public and the bus industry. The preemption of state regulatory decisions by the ICC would work at cross-purposes to our goals and upset the delicate balance that we have achieved between rate regulation, essential bus service and government funding.

New York State is fortunate in having an excellent intercity bus system under the present intrastate/interstate regulatory scheme. We have 121 small communities with populations ranging between 2,500 and 50,000 people. One hundred seven of these communities, or 90 percent of them, are getting daily service from one or more intercity bus companies. These small communities not only get daily bus service, but they get that service at reasonable fare levels ranging between six and nine cents a passenger mile. In New York State carriers are able to provide this service at reasonable fares and still maintain profitability for the following basic reasons:

Bus companies are granted franchise route protection through economic regulation and are awarded franchises to serve the dense lucrative markets as well as having an obligation to serve the less lucrative rural markets.

Bus companies are granted protected incidental charter rights and are expected to use profits from recreational charter activities to cross subsidize the less profitable essential route operations.

The State of New York provides direct operating assistance funding to keep the bus industry viable and the fares reasonable. During fiscal 1981-82 state funding to the private bus industry in New York State amounted to $40 million. This is expected to increase substantially during fiscal 1982-83.

The Section 17 provisions of the Act dealing with intrastate rate preemption are contrary to the interests of the bus riding public. The Act envisions a greater degree of competition in the intercity bus industry and the creation of an environment where government agencies can take a more relaxed stance on fare levels. While the theory of competition to establish and maintain reasonable fare levels is good, the practicality of reaching a truly competitive situation in the intercity bus industry is at best speculative. There are only two major carriers that dominate the national intercity bus market. These two carriers control a large proportion of the bus terminals that serve the public. Without either control or access to those terminal facilities by other carriers, the relaxed entry provisions designed to create a competitive situation will fail.

Instead of providing for a financially stable and balanced industry, the Act will provide for intense competition between densely populated city market pairs with no noticeable fare reductions; a withdrawal of services to rural and small communities; and an automatic escalation of rates to the consumer in non-competitive markets. This is hardly a piece of legislation that can be considered to be in the best interests of the bus riding public.

If Congress is convinced that deregulation of the bus industry is essential, it should also simultaneously address the issue of abandoned service to small communities and provide the necessary funding to assure the continuation of an adequate level of service to those communities. Funding for abandoned intercity bus service to small communities is not addressed in the Act. The implication is that the federal government would deregulate in the national interest and leave the problem of subsidy up to the local communities. I feel that the federal government has an obligation to fund at least a minimum level of essential intercity bus service as it did in the deregulation of the airlines.

Given the proper federal funding, carriers could be relieved from the common carrier obligation to serve unprofitable routes. This may require that the subsidy funds be distributed on a per route or a purchase of service arrangement rather than being based on the overall financial need of a carrier. In this way, unprofitable but socially needed route segments could be retained. A subsidy program could also play an important role in the area of providing capital grants for terminal facilities and buses and thus open up access to terminal facilities to competing carriers.

A comprehensive plan for operating and capital assistance must be an integral part of any program for the deregulation of the intercity bus industry. Precedents for federal subsidy can be found in airline and railroad deregulation. Legislation in both of these modes provided for interim subsidization of service which was deemed essential for industry and commerce in small communities. If this committee determines that bus deregulation is in the public interest, I would urge that it also consider a transitional assistance program to:

1. Provide for the continuation of essential transportation service to the residents of rural and small urban areas.
2. Provide for technical assistance to recipients.
3. Provide that the prime responsibility for administration of the program rest with the states.

In summary, I would advocate that the committee reject those portions of the Act that would permit the ICC to preempt local state regulatory decisions on entry, exit and rates (Sections 6, 16 and 17 of the Act) or, in the alternative, include provisions to ensure that adequate federal funding is available to meet the essential intercity bus transportation needs of the residents of rural communities and small urban areas.

PROFESSIONAL BUS DRIVERS
CITIZEN'S BAND RADIO ASSOCIATION, INC.,
Salt Lake City, Utah, March 2, 1982.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee for Surface Transportation,
Russell Senate Office Building, Washington, D.C.

DEAR SENATOR: On February 18, 1981, Tom Harkin, Rep. from Iowa, introduced H.R. 1914 cosponsored by Rep. Dan Narriott of Utah. This legislation would allow the use of CB radios by those motor bus drivers who desire to temporarily install them in their buses. This action has long been awaited as we have no communications whatsoever on board buses, and only found necessary when the two largest bus companies, Greyhound Lines and Trailways, Inc., chose to ignore the federal policy of June 16, 1978, signed by the Secretary of Transportation, Chairmans of the Interstate Commerce Commission and the Federal Communications Commission to encourage CB radios aboard intercity buses.

I am an honorary trustee for the Professional Bus Drivers Citizen Band Radio Association based in Salt Lake City, Utah, and am a representative in the midwest for this association. My office address is 1020 North 26 Street, Council Bluffs, IA 51501. I want to thank you for the opportunity to submit this statement and these enclosures which I believe fairly represent the need for an amendment that is attached to H.R. 3663.

I must admit I am very puzzled by a rider attached to this amendment calling for a six month study by The National Academy of Sciences Foundation to support our claims. Millions of dollars of taxpayer's money have already been spent, and hearings have been held all over these United States on this subject matter starting with hearings April 10, 1979, in Washington, D.C. and April 17, 1979, in Salt Lake City, Utah, before the Federal Highway Administration Bureau of Motor Carrier Safety and the Department of Transportation. Once again they reiterated its positive statement that it is federal policy to encourage the use of citizen band radios to promote highway safety ad service. The Federal Register Publication of January 17, 1980, notes that the Federal Motor Carrier Safety Regulations do not prohibit the use of citizen band radios in commercial vehicles operating in interstate and foreign commerce. Dr. Robert A. Kaye, Director of the Bureau of Motor Carrier Safety, specifically stated that the denial of the drivers' petition to require carriers to permit the use does not preclude the lawful use of CB radios for purposes of safety in all commercial motor vehicles operating in interstate or foreign commerce.

I received a personal phone call from Dr. Kaye prior to this position statement being printed in The Federal Register, and he specifically told me that it would be illegal to tell me at this particular time what the policy statement would include. He also stated it probably wasn't everything the bus drivers wanted but it was intended to send a hell of a good message to the bus companies from the U.S. Government. Once again, as usual, the bus companies chose to ignore this restatement of federal policy. They will tell you it is a labor management issue. We agree, in part, that is true. We also must realize there is a substantial safety issue involved, and these bus companies are government sponsored carriers subject to rules and regulations of the Interstate Commerce Commission, and therefore, since their continued position of ignoring federal policy, federal legislation seems to be the only answer.

There were House field hearings in Pittsburgh, PA, before the Honorable Doug Walgren and Eugene Atkinson. Both eventually co-sponsored H.R. 1914 before the House Subcommittee hearing and reported at the close of the Pittsburgh hearing they could definately see a need for communications aboard buses. On June 27, 1981, the Honorable Glenn M. Anderson and the Honorable Don H. Clausen held field hearings in Los Angeles, CA, concerning the Bus Regulatory Reform Act. Representatives from Union Division 1222 attended these hearings and were supposed to only speak ten minutes on this subject matter but were allowed over one hour to present testimony. On February 4, 1981, I personally testified in Jefferson City, Missouri, along side Rep. Dennis Smith telling them of the need for communications aboard buses along with several drivers throughout the midwest and the state of Missouri. There were also company representatives present, and we again listened to the bus companies' statements of why they were opposed to CB radios. Most of these statements were inaccurate containing elements of propaganda, the usual company rhetoric that we have heard for years on this subject matter. They will tell you about a bus driving off the road in Colorado and having a serious accident blaming a CB radio, fuzzbuster, and an AM radio that were on board at the time. Enclosed you will find a copy of the Allan Elder Arbitration in which the matter was thoroughly reviewed by a neutral arbitrator. Mr. Elder was reinstated to his position as a driver for Trailways and awarded one year's back salary with interest. The reward was based on a time limits violation but the arbitrator also stated he felt there was no fault of the driver error involved and in private conversation after the arbitration hearing, stated that he felt there was a steering problem in the Trailways Eagle bus that crashed—yet these people keep going around the country and into Washington, D.C. speaking of this incident.

The Missouri legislation also deals with violence and other problems that we may have aboard our buses. It is good legislation and much needed. SB 519 is now awaiting approval by the state of Missouri and looks very favorable for passage this year. We felt it would have passed last year but because of legislation dealing with Medicare, Medicaid and Reapportionment, although very good legislation, was not able to be acted upon in 1981. The bus company will tell you there is no economic issue involved here, but the Bus Truck Association that represents the bus companies sent a letter threatening to sue the State of Missouri if the legislation passed. Also included in this letter was a cost incurred by the bus companies to provide inexpensive electrical hookups for the radios.

The bus company will quote in part the Bureau of Motor Carrier Safety policy statement issued January 17, 1981, as well as other arbitrations, but they very carefully point out the few negative sides that these decisions include but they fail to include the much more positive side. They will also quote you a recent study by the California Highway Patrol that CB radios are not of significant value. In my recent conversations with various unions in California, no union that I am aware of was ever consulted by the California Highway Patrol for advice or input into their study. I'd be very much interested to see how this study was performed. Recent statements by Mr. Robert Foreman, at the Missouri hearings concerning incidents taken from The U.S. Department of Transportation's summaries of about six hundred investigations, blames four serious truck accidents between 1974 and 1976 on distractions caused by CB radios. Dick Brown, reporter for The Des Moines Tribune, in his related article dated May 18, 1981, titled "Accident Reports in Dispute" states the investigator's accident reports say something different. When Brown contacted Robert Foreman, Vice President of Safety and Service for Trailways in Dallas, said he and many other people took it for granted (summaries) actually stated the cause, but he promised to look into the matter and remove the summaries from Trailway's position paper if he finds them to be inaccurate. Judging from his testimony in the Missouri hearing, 1982, he hasn't yet got around to looking into the matter.

It is very rare to see a smaller bus company, including subsidiaries of Greyhound Lines, on the highways that do not have CB radios on board. Each driver you talk to, who has experienced using a CB radio, will tell you that the CB radio is one of the best things that have been invented for transportation safety. They will tell you it is an issue of safety and the ability to relay crucial information rapidly whether it deals with road conditions, weather, highway incidents, or threats to lives on board. It is of no small consequence that the professional drivers who have attended informal hearings as well as formal legislative hearings did so at their own expense because of their deep concern for the intractable position of the two companies which are out of the mainstream in their refusal to recognize the valuable contribution of citizen band radios to the traveling public.

The bus companies continue to quote The B.M.C.S. Regulation, 39262, concerning bus drivers distractions and how they are afraid a driver may be distracted while using a CB radio, but they fail to realize as we drivers have emphasized at many of these legislative hearings that the professional bus driver from the first day they start driving a bus learns to deal with distractions as part of their job, whether it is babies crying or unruly passengers and the many serious problems that we are confronted with. The bus companies do not object nor do the drivers when a group of ball fans will charter a bus and bring twenty-five or thirty cases of beer on board and scream to the top of their lungs, Go Tigers or Go Big Red or the favorite saying of their favorite sports team for a period of five to ten hours depending on the length of the trip. In fact, the bus companies offer to install party bars and card tables to accommodate their customers. The drivers want to see people enjoy themselves because of the needed business as well as to eliminate congestion and provide their contribution to safety on the highways. Once again, a professional bus driver should be qualified to deal with any distraction that may occur through their career and should also be professional enough to drive their valuable buses and use a CB radio sensibly for safety purposes as well as set an example to promote highway safety.

I've enclosed hundreds of incidents to you, Senator Danforth, once again telling you how a CB radio has helped to minimize or eliminate some serious problems. I'd like to bring to your attention a 1978 survey conducted by Trailways of 822 drivers to see if incidents of violence on buses were increasing. The survey showed that in a year there were 15 highjackings, 17 bomb threats, 88 assaults on bus drivers, 91 assults on passengers, 11 rapes, 36 cases of firearms being discharged on or at buses. This was taken from the Amarillo Globe News, November 1, 1979. To the best of my knowledge there haven't been any more surveys conducted.

Greyhound driver, Wayne Thompson, foiled a highjacking by calling a passing truck driver on his CB in violation of company policy. The truck alerted the Indiana State Police who intercepted the bus and arrested the highjacker. For his efforts, Thompson was suspended for ten days without pay. This was taken from The Cleveland Plain Dealer on July 15, 1980. In one incident, a Greyhound bus in St. Petersburg, Florida, went off a ragged end of a bridge that had been knocked down in part by a freighter during a storm. A driver of a car on the bridge was screaming over his CB radio trying to warn the bus that the bridge was out. The Greyhound bus, three cars and a truck drove past him, toppled off the ragged end of the towering highway span. All nine people in the three cars died, twenty-two passengers and the bus driver were killed. This was taken from The Augusta Chronicle, Augusta, Georgia, May 10, 1980. The July 26, 1979, Omaha World Herald reported a deranged passenger stabbed a Trailways driver on I-95 outside Richmond, Virginia. The bus driver pulled the bus to the side of the road and died at the wheel while the passenger ran off the bus and was himself run over and killed by a hit and run driver.

In other words, every kind of emergency has in fact befallen interstate buses and yet the two major bus companies refuse to provide or even allow the kind of equipment that could summon aid to save life, limb and property.

The human beings relying on bus transportation have a right to demand that their government afford the highest degree of protection to them on their journeys. The absence of a citizen band radio and its capacity for instant communications on the two major bus lines is a glaring disregard for the rights of these passengers and their professional drivers. Inasmuch as technology can reduce abuse to a minimum, no good reason exists to disallow CB radio equipment on buses. These radios are needed now. We don't see a need for any further studies or stalling by the bus companies whom we feel are simply worried about the profit and loss column. We also urge you to accept all amendments offered by The Amalgamated Transit Union and The United Transportation Union as we feel it would be in the best interest of the traveling public in general and their members in particular.

Very truly yours,

RUSS LETT.

Enclosures.[1]

JEFFERSON LINES, INC.,
Minneapolis, Minn., March 15, 1982.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR SENATOR DANFORTH: I wanted to thank you for having given me the privilege of testifying before your Subcommittee on bus deregulation last Monday. Prudent regulatory reform will undoubtedly lead to significant service improvements for the traveling public. This, in turn, will allow the bus industry to regain its financial health. As I stated, HR 3663 is the best regulatory reform bill for the intercity bus industry. I sincerely hope last Monday's hearing has provided confirmatory evidence for its desirability.

I would like to use this opportunity to correct a statement made by Commissioner Shapleigh from the Missouri Public Service Commission in his testimony. As you may recall, Commissioner Shapleigh attempted to raise doubts about the veracity of my claim that the Missouri Public Service Commission saw fit not to grant us a permanent intrastate rate increase for about 2 years. Quite frankly, I welcome the Commissioner's challenge. My rebuttal makes an excellent case for the urgent need that state oversight be restricted.

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[1] The enclosures have been retained in the committee files.

As you can see from the attached chronology, Jefferson initiated its proposed intrastate rate increase on September 10, 1979. We did not receive a permanent increase until September 4, 1981, when the Commission Staff conceded our case on the date of the hearing without a full final hearing being required. To put the matter in perspective, the requested increase was designed to augment our revenues by only $80,000.

Rather than enjoying the permanent rate relief we felt was reasonable to request, we were forced to spend about $20,000 in legal- and expert expenses. In the interim, the compounded inflation rate was about 38 percent. For reference, Missouri has a 10-month statutory time frame for deciding rate cases initiated by tariff. Because our initial application was filed in application form, rather than by tariff, no time limit was applicable. Since that time we have by practice initiated all rate changes by filing of tariffs.

Since our intrastate rates in Missouri remain about 27 percent on average below comparable interstate rates, we filed for a new rate increase on December 28, 1981. Disappointingly, the Missouri Commission appears to persist in its unconciliatory attitude. A hearing on the matter is not scheduled until September 27, 1982, which means we will have to continue our Missouri intrastate operations at a loss for almost all of 1982. Administrative delay simply prolongs this absolutely intolerable situation.

As I mentioned in my testimony last Monday, the essence of all this is not so much the fact that we lose money in Missouri, although these losses are causing us serious financial hardship. Neither is it our desire to expose the Missouri Commission's arbitrary behavior per se. I am absolutely convinced that the Missouri Public Service Commission is made up of capable, honest men and women of the highest integrity, who only want to protect the public's interest.

The essence is that there is something fundamentally wrong with the system. Specifically, the current authority exercised by the states is harmful to the traveling public. As long as the bus industry has to live under restrictions which force us to lose money, there is no encouragement to strive for service innovations. Quite to the contrary, we now have every incentive to reduce intrastate service!

Senator Danforth, let's do something more productive than continuing to line up squares in a bureaucratic Rubik's Cube. Please help us enact HR 3663! The Public Service Commissions have more important things to do than spend their time and efforts on intrastate bus rates, the bus companies need the freedom to do a better job, and most importantly, the public deserves to reap the benefits from increased competition.

Sincerely,

DANIEL F. PRINS, *President.*

Enclosure.

SIGNIFICANT DATES AND EVENTS IN JEFFERSON'S 1979-80 MISSOURI RATE PROCEEDINGS

September 10, 1979—Preliminary steps taken to file application for rate increase.

November 12, 1979—Company attorney, Douglas, in contact with Commission Staff on procedure to be followed due to change of policy by Commission on multicarrier applications.

December 6, 1979—Testimony supporting proposed increase prepared by Jefferson.

December 31, 1979—Letter from Douglas to Crockett, Jefferson Controller, commenting upon recent Trailways hearing—recommended for the first time that Jefferson establish and validate with a professional statistician a sampling procedure for use in future Missouri hearings.

January 22, 1980—Application filed to increase rates. Delay due to PSC changes in past policies: Consolidated cases disallowed; Fuel surcharge voided by Missouri court.

February 4, 1980—PSC Order: Jefferson to file testimony by March 26, 1980; intervenors to file testimony by April 11, 1980; PSC to file testimony by April 11, 1980; pre-hearing conference set for April 18, 1980; and hearing set for April 24, 1980.

March 26, 1980—Jefferson files testimony.

April 18, 1980—Pre-hearing conference held. Temporary increases approved effectivce May 5, 1980. Understanding that Jefferson would file for a new, permanent increase.

May 1, 1980—Order issued granting emergency interim rate increase for passenger and express rates. Hearing continued from April 24, 1980 to July 23, 1980.

May 5, 1980—Letter from PSC to Jefferson scheduling audit for May 19 to 23, 1980. Requested extensive data for four years, 1976–79.

May 27, 1980—Filed amended application for permanent rate increase.

May 29, 1980—Missouri PSC order: Jefferson to file testimony June 26, 1980; and PSC Staff to file testimony June 26, 1980.

May 19-23, 1980—June 9-13, 1980—PSC audit in Minneapolis.

June 3, 1980—Mo PSC order correcting Staff errors in May 29, 1980 order.

June 6, 1980—1979 general ledger reconciliation furnished to PSC auditors.

June 13, 1980—Payroll reconciliation sent to PSC auditors.

June 19, 1980—ICC account reconciliation sent to PSC auditors.

June 23, 1980—ICC account workpapers of PSC auditors sent to Jefferson.

June 24, 1980—1979 payroll reconciliation furnished to PSC auditors. Commission staff files motion to continue hearing from July 2, 1980 to August 26, 1980.

June 27, 1980—Two page letter from PSC requesting extensive clarifications of intrastate quarterly reports.

June 30, 1980—PSC order: Hearing re-scheduled at Staff request to August 26 to 27, 1980; Jefferson to file testimony by July 25, 1980; and Staff to file testimony by August 15, 1980.

June 30, 1980—Two page letter from PSC auditors requesting extensive clarifications.

July 21, 1980—PSC audit workpapers due and received in Minneapolis.

July 23, 1980—Letter form PSC to Prins, Jefferson President, requesting assistance in obtaining information from Crockett.

July 24, 1980—Additional audit workpapers requested by MO PSC.

July 24, 1980—Two page explanation with workpapers to auditors on payroll reconciliation.

July 25, 1980—Jefferson filed testimony for permanent hearing scheduled for August 26, 1980.

August 1, 1980—PSC motion for indefinite hearing continuance.

August 1, 1980—Revised quarterly report sent to PSC with explanations.

August 1, 1980—Explanation of charter statistics sent tof PSC staff.

August 5, 1980—Request made of vacationing Dr. Martin, Jefferson Statistician, for workpapers.

August 6, 1980—1979 certified audit report sent to Staff.

August 7, 1980—Payroll information and statistical workpapers sent to PSC.

August 8, 1980—Reply to motion to continue hearings filed by Douglas.

August 11, 1980—Hearing continued to indefinite date.

August 11, 1980—PSC letter questioning prior period audit adjustment.

August 13, 1980—Two page letter and 29 pages of workpapers which answer various PSC questions.

August 13, 1980—Final information requested by PSC Staff filed.

August 18, 1980—Letter to PSC explaining prior period audit adjustment.

August 20, 1980—Hearing re-scheduled for August 26 to 27, 1980. Staff to file testimony by August 22, 1980.

August 26 to 27, 1980—Hearing on application held. Briefing schedule set by hearing officer with Jefferson's brief to be filed by December 15, 1980. Commission's reply to be filed by January 5, 1981.

September 3, 1980—Letter to PSC stating willingness to document management fee in manner desired by Staff.

September 9, 1980—Letter from PSC Stafff stating that Commission must determine required management fee documentation. Jefferson will be notified when this is done.

November 21, 1980—Hearing transcript filed

December 13, 1980—Brief filed by Douglas.

January 26, 1981—Brief filed by PSC Staff Attorney.

May 8, 1981—Reply brief filed by Douglas.

June 5, 1981—Commission issued order denying permanent rate increase effective July 7, 1981; continued interim increase in effect.

July 7, 1981—Permanent rate increase request denied. Interim increase continued.

1981 MISSOURI RATE PROCEEDINGS

November 21, 1980—Commission filed tariffs increasing charter rates.

January 13, 1981—Letter from Syvertson, Jefferson tariff clerk, to NBTA requesting that tariffs be issued to increase passenger and express rates.

February 9, 1981—Tariffs issued by NBTA, to be effective March 20, 1981.

February 18, 1981—Tariffs suspended by Missouri PSC until July 18, 1981.

March 12, 1981—Tariffs further suspended until January 18, 1982; Jefferson to file supporting testimony by April 23, 1981; PSC Staff to file testimony by May 22, 1981; Jefferson to post public notice of increase by March 22, 1981; and hearing scheduled for June 2, 1981.

April 28, 1981—Jefferson to file testimony by July 10, 1981; PSC Staff to file testimony by August 17, 1981; Jefferson to file rebuttal testimony by August 24, 1981; Jefferson to post public notice of increase by May 7, 1981; and hearing scheduled for August 25, 1981.

May 7, 1981—Public posting required by PSC completed.

June 1, 1981—Pre-hearing conference between PSC Staff Attorney, Douglas and Hook, Jefferson Sr. Vice President, on procedures to be followed in emergency, interim rate proceedings.

June 19, 1981—Letter form PSC requesting audit July 6, to 10 and July 20 to 24.

June 26, 1981—Crockett letter to PSC confirming audit dates.

July 6 to 10, July 20 to 24, 1981—Field audit of Jefferson by PSC auditors.

July 7, 1981—Dr. Martin, statistical consultant, made available to Staff in Minneapolis for review of sampling procedures.

July 10, 1981—Testimony and exhibits filed with PSC.

July 15, 1981—Crockett reviewed by phone first week of auditing with PSC audit manager.

July 16, 1981—Telephone deposition taken of Martin.

July 22, 1981—Letter from Martin to PSC Staff on sampling confidence intervals.

July 23, 1981—Hearing on preliminary increase held.

July 24, 1981—Pre-filed testimony by Lochrie, forecasting consultant.

July 30, 1981—PSC Auditor called with request for more information. Responded same day by letter with some information and request to receive clarification of request.

August 4, 1981—Two phone calls from auditors clarifying information request.

August 4, 1981—Five pages of workpapers sent to PSC auditors.

August 5, 1981—Complete information furnished PSC auditors on Zelle, Stolpman, Viera, Howdek & Jensen on wages and travel expenses.

August 7, 1981—Eight page memorandum brief on interim rate proceedings filed by Douglas at request of Hearing Examiner.

August 7, 1981—Nine page brief filed by PSC Staff Attorney on interim rate proceedings.

August 11, 1981—Reply brief filed by Douglas.

September 4, 1981—Report and order issued by Missouri PSC granting entire rate increase request.

1982 MISSOURI RATE PROCEEDINGS

November 16, 1981—Memo from Crockett to Syvertson requesting that MO intrastate passenger and express rates be increased.

December 28, 1981—Tariffs issued to increase rates effective February 5, 1982.

January 5, 1982—Upon request of PSC Staff, letter from Crockett stating justification for requested rate increase.

January 7, 1982—Order suspending increase until June 5, 1982.

March 1, 1982—Second suspension order and notice of proceedings; increase suspended until December 5, 1982; interested parties invited to file application to intervene by March 31, 1982; Jefferson testimony to be filed by June 18, 1982; PSC Staff testimony to be filed by September 3, 1982; Outside interveners' testimony to be filed by September 3, 1982; Rebuttal testimony to be filed by September 17, 1982; pre-hearing conference scheduled for September 27, 1982; hearing scheduled for September 27, to October 1, 1982.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., March 22, 1982.

Hon. JOHN DANFORTH,
Chairman, Subcommittee on Surface Transportation Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: American Trucking Associations, Inc. (ATA), offers the enclosed statement for consideration by your Subcommittee involving the subject of bus regulatory reform. As the statement indicates, we have limited our comments to those sections of H.R. 3663 which are applicable to motor carriers of property as well as to motor carriers of passengers.

In his testimony of March 8, 1982 before your Subcommittee, the Chairman of the Interstate Commerce Commission additionally recommeded that you consider elimination of ICC jurisdiction over the issuance of motor carrier securities. This matter is being reviewed by the trucking industry at the present time and, as soon as a position has been developed, we will transmit the results of our consideration to you.

We thank you for your consideration of our statement, and respectfully request that you include it as a part of the hearing record on bus regulatory reform and H.R. 3663.

Sincerely,

Bennett C. Whitlock, Jr.

Enclosure.

Statement of American Trucking Associations, Inc.

American Trucking Associations, Inc. (ATA), is the national organization for the trucking industry. It has affiliated associations in each state and thirteen national conferences. ATA represents every type and geographical scope of trucking operation in the United States.

ATA takes no position on the exclusively passenger provisions contained in H.R. 3663, the "Bus Regulatory Reform Act of 1981," which is being considered by this Subcommittee. Rather, our interest is directed to those few sections of H.R. 3663 which are applicable to both passenger and property motor carriers.

CANADIAN/MEXICAN PROVISIONS

First, the bill contains language which would deal with applications of foreign persons for authority to provide motor common carrier service of passengers or property, as follows: "(1) If, in the case of an application by a person from a political subdivision of a foreign country for issuance under this section of a certificate to provide transportation as a motor common carrier, the Commission finds that, under the policies of such political subdivision or of such country, persons from the United States are not treated as favorably as persons from such political subdivision or country, the Commission, in its discretion, may elect not to issue the certificate.

"(2) No certificate to provide transportation as a motor common carrier shall be issued under this section to any person from a political subdivision of a foreign country unless such political subdivision or such country grants authority to persons from the United States to provide transportation by motor vehicle for compensation in such political subdivision or country.

"(3) This subsection shall only apply to foreign persons who are from countries contiguous to the United States.".

The trucking industry is pleased that the Congress is considering the unfair competitive advantage Mexican and Canadian motor carriers enjoy vis-a-vis their American counterparts as a result of the lack of reciprocity between the countries on entry into the business. Since Canadian carriers are able to obtain authority from the United States in a much easier fashion than can United States carriers in the Candian provinces, and since United States carriers are flatly prohibited from operating in Mexico, simple logic dictates that, in the future, the balance of international freight carried in the U.S. will more and more tip in favor of foreign motor carriers. Unless the Congress acts, Canadian and Mexican carriers will be able to participate freely in transporting international freight within this country, while U.S. carriers will continue to live with the respective licensing constraints imposed by those neighboring countries.

ATA has strongly voiced these concerns to the Interstate Commerce Commission (ICC). Other carriers have raised the same objections in individual proceedings. As to the Mexican side of the problem, the ICC has placed most Mexican applications for United States operating authority on the back burner, pending the outcome of the Permisionarios case where a Mexican applicant is seeking general commodities authority. We have been joined in our efforts by departments of State, Commerce and Transportation, which have filed comments opposing the application. A decision should be forthcoming soon, but the ICC has been very slow to act. So far, the Commission has rejected, or refused to consider, the need for a policy of mirror reciprocity to eliminate this potential erosion of United States carriers' competitive position.

The situation in Canada is more complex. Until recently, the ICC had been reluctant to acknowledge that a problem even exist. In the more that 300 applications already approved, the reciprocity issue was either ignored or dismissed as hearsay—a factor to be considered by the Canadian government, not the ICC.

Part of the problem stems from the fact that Canada is attempting to protect Canadian control over its industries by limiting foreign investment and expansion. Further complicating the issue is the fact that the different provinces in Canada have different entry standards which makes obtaining authority into a numer of territories difficult at best. All of the provinces, however, are much restrictive on entry than the ICC has been.

ATA entered the northern fray by protesting 12 Canadian applications before the ICC for broad general commodity authority. Thereafter, primarily as a result of the many expressions of concern by members of Congress, the ICC instituted an investigation into Canadian law and policy regarding applications of American motor carriers for Canadian operating authority. The ICC plans to conduct oral hearings to "investigate whether existing law and policy on the part of the Canadian government effectively discriminates against U.S. motor carriers, precluding their single-line participation in the transportation of international general commodity freight." In addition to its investigation, the ICC has placed a partial moratorium on further grants of authority to Canadian carriers until resolution of its investigation.

The trucking industry questions the direction of the ICC investigation, since we have not been raising "discrimination" by Canadian provincial boards, but "reciprocity," as the real problem. In any event, and from the foregoing, it should be apparent that the ICC does not appear to be very disposed to use its reciprocity powers to resolve the problems of differing entry standards. Therefore, legislative action is necesary and, in some ways, more desirable.

The problem of the invasion of Canadian and Mexican motor carriers into the United States was unwittingly created with the passage of the Motor Carrier Act of 1980 (Public Law 96-296). However, nothing in that Act or its legislative history suggests that Congress considered what effect the new entry policy would have on foreign carriers or on United States carriers transporting freight in international commerce. Contrarily, the airline Deregulation Act of 1978 (Public Law 95-504) specifically excluded foreign air transportation from its provisions. It is quite likely that, had Congres considered the issue in 1980, foreign motor transportation would have been excluded from the easier entry standards of the Motor Carrier Act.

The time is ripe to deal with this pressing problem. Congress should act now before more and more Canadian and Mexican motor carriers obtain United States operating authority. Otherwise continuation of the existing situation will quickly render the problem moot, particulary if the ICC concludes its investigation into discrimination and begins again to grant foreign applications.

H.R. 3663 presents an appropriate and quickly available legislative route to remedy the problem. However, the present three provisions in the bill need further consideration and some fine tuning. While they would generally resolve the Mexican side of the problem, since the ICC would be barred from issuing authority to a carrier from a country that flatly bans U.S. carriers, the other provisions do not deal adequately with the Canadian side of the problem. As presently drafted, the pertinent provisions of H.R. 3663 would require that the ICC consider discrimination in Canada as the test for granting Canadian carriers authority in this country. The ICC would be required to determine whether U.S. carriers can obtain Canadian authority to the same degree and on the same basis as Canadian carriers can obtain Canadian authority.

To fully resolve the Canadian and Mexican problem, we propose substituting the existing provisions of H.R. 3663 on this subject with the language contained in S. 2057. The main thrust of S. 2057 is to match the overall Canadian provincial entry standards. Such standards are not unlike the pre-1980 standards in the Interstate Commerce Act, and would apply on foreign commerce when the movement involves single-line service between the United States and either Canada or Mexico. S. 2057 would also bar foreign carrier operations in the United States, if the government of that carrier bars United States carriers from operating in that foreign country.

The approach taken in S. 2057 is necessary and beneficial because neither Canada nor Mexico exhibit any signs of moving toward the kind of reforms contained in the 1980 Motor Carrier Act. Nor do we believe it appropriate to attempt to force other countries to adopt our theory of economic regulation of transportation. We should not be in the business of "exporting" regulatory theory, a posture which has proven unsuccessful in international aviation matters. The American trucking industry's primary interest is ensuring equal competitive opportunity for U.S. carriers. Congress has found this to be appropriate for the American airline industry and we ask that it do likewise for the American trucking industry.

MERGERS

Another section of H.R. 3663 which is applicable to property as well as passenger motor carriers involves mergers of two or more carriers. Section 21 would reestablish the pre-1980 criteria for ICC approval of mergers, consolidations and acquisitions of one carrier by another. These standards were revised by the Staggers Rail Act of 1980 (Pub. L. 96-448) and presently require ICC approval of control applications—other than those involving class I railroads—unless the ICC finds that:

> "[A]s a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and
>
> "[T]he anticompetitive effects of the transaction outweighed the public interest in meeting significant transportation needs." 49 U.S.C. § 11344(d)

These new standards are more compatible with today's economic regulation of motor carrier transportation as it has been adjusted by the Motor Carrier Act of 1980. In fact, they are similar to those applicable to consolidations of businesses generally.

Unfortunately, the Commission is reluctant to apply the new standards to motor carrier mergers. In a rulemaking proceeding, Ex Parte No. 55 (Sub-No. 53), *Motor Carrier Consolidation Procedures, General Policy Statement*, the ICC has indicated its intention not to apply these standards to motor carrier mergers because it does not believe the Staggers Act was intended to affect motor carrier regulation. The Commission is ignoring the plain language of the statute. Therefore, a rejection by this Subcommittee to adopt the old standards—by eliminating section 21 of H.R. 3663 with appropriate report language—would be an effective way to guide the Commission in its confusion and direct it to apply the new standards to motor carrier mergers.

Interestingly, the ICC and the Secretary of Transportation have proposed in their testimony before the Subcommittee that ICC jurisdiction over mergers completely be eliminated by the Congress. They would leave such transactions exclusively subject to antitrust scrutiny by the Department of Justice.

We do not believe that total elimination of ICC jurisdiction over motor carrier mergers is appropriate. The flaw in this approach is that the ICC is an agency specially created to overview motor carrier transportation and to carry out the National Transportation Policy (49 U.S.C. § 10101). Merger control is more appropriately in the hands of the ICC which has the responsibility of carrying out the goals of promoting competitive and efficient transportation service (49 U.S.C. § 10101(a)(7)), than in the hands of the Justice Department whose goals are sometimes incompatible with the National Transportation Policy.

○